Oct. 5, 1934. Motion to consolidate with dockets 75812, 75849 and 75852 filed by taxpayer. 10/6/34 granted.

Oct. 8, 1934. Hearing set Nov. 12, 1934.

Nov. 12 & 13, 1934. Hearing had before Mr. Smith—submitted on merits. Motion to consolidate granted—consolidated with 62025, 75849, 75852 and 75812. Stipulation of facts filed. Petitioner's brief due Jan. 14, 1935—respondent given 30 days for reply—petitioner given 15 days for reply.

Nov. 12, 1934. Motion for consolidation granted.

Nov. 16, 1934. Transcript of hearing of Nov. 12 and 13, 1934 filed.

Nov. 28, 1934. Motion for leave to file brief as amicus curiæ on date set for filing regular briefs and any extensions to file brief to apply to this case, filed by Will R. Gregg.

Jan. 12, 1935. Brief and request for findings of fact filed by taxpayer. 1/12/35 copy served.

Feb. 9, 1935. Motion for extension to Feb. 26, 1935 to file brief filed by General Counsel. 2/9/35 granted and petitioner's reply brief due 3/13/35.

Feb. 25, 1935. Brief filed by General Counsel.

Mar. 1, 1935. Motion for oral argument filed by General Counsel. 3/2/35 denied.

Mar. 8, 1935. Motion for extension to March 20, 1935 to file reply brief filed by taxpayer. 3/9/35 granted.

Mar. 19, 1935.	Reply brief filed by taxpayer. 3/19/35 copy served.
Mar. 22, 1935.	Motion for leave to file brief amici curiæ filed by Hopkins, Sutter, Halls and DeWolf. 3/22/35 granted—copies to be served on both parties.
Mar. 22, 1935.	Brief of amici curiæ filed by Hopkins, Sutter, Halls and DeWolfe.
Mar. 23, 1935.	Copy of motion and brief of amici curiæ served.
Sept. 30, 1935.	Opinion rendered—C. P. Smith, Division 5. Judgment will be rendered under Rule 50.
Nov. 5, 1935.	Notice of settlement filed by General Counsel.
Nov. 6, 1935.	Hearing set Nov. 27, 1935 under Rule 50.
Nov. 23, 1935.	Consent to settlement filed by taxpayer.
Nov. 30, 1935.	Decision entered—C. P. Smith, Division 5.
Feb. 25, 1936.	Petition for review by U. S. Circuit Court of Appeals (3) with assignments of error filed by taxpayer.
Feb. 25, 1936.	Proof of service filed.
Apr. 11, 1936.	Motion for extension of 60 days from 4/24/36 to prepare and transmit record filed by taxpayer.
Apr. 11, 1936.	Order enlarging time to June 23, 1936 to prepare evidence and transmit record entered.
Apr. 30, 1936.	Statement of evidence lodged.

Apr. 30, 1936.	Præcipe filed.
Apr. 30, 1936.	Proof of service of præcipe and notice of hearing on May 20, 1936 to approve statement filed by taxpayer.
May 6, 1936.	Counter præcipe filed by General Counsel.
May 11, 1936.	Objections to statement of evidence filed by General Counsel.
May 14, 1936.	Motion to continue hearing to May 27, 1936 to approve statement filed by General Counsel. 5/15/36 granted.
May 15, 1936.	Proof of service of counter præcipe filed by General Counsel.
May 15, 1936.	Notice of lodgment of counter præcipe filed by General Counsel—proof of service thereon.
May 18, 1936.	Notice of objections to statement of evidence filed by General Counsel —proof of service thereon.
May 25, 1936.	Amended objections to statement of evidence filed by General Counsel.
May 25, 1936.	Amended counter præcipe filed by General Counsel.
May 27, 1936.	Hearing had before Mr. Smith on approval of statement of evidence—the statement of evidence as submitted is to be physically withdrawn and certain corrections to be made and a new statement lodged. Appearance of D. T. Easby, Jr., and F. J. Daniels filed.

May 27, 1936. Order continuing to the Day Calendar of June 10, 1936 entered.

June 4, 1936. Notice of exception to the ruling of the Board denying respondent's motion to require that the record on review as certified contain a notation that certain British decisions were called to the Board's attention before its decision herein, filed by General Counsel.

June 10, 1936. Hearing had before Mr. Smith on approval of statement of evidence—agreed. Amended counter præcipe overruled and exception noted to respondent.

June 12, 1936. Transcript of hearing of June 10, 1936 filed.

June 18, 1936. Proof of service of amended counter præcipe filed by General Counsel.

June 18, 1936. Proof of service of amended objections to statement of evidence filed by General Counsel.

June 19, 1936. Order that time for transmission and and delivery of record be extended to July 20, 1936 entered.

June 11, 1936. Statement of evidence approved and ordered filed.

PETITION.

(Filed April 24, 1934.)

UNITED STATES BOARD OF TAX APPEALS.

DOCKET No. 75742.

George W. Elkins,
Petitioner,

v.

Commissioner of Internal Revenue,
Respondent.

The above-named petitioner hereby petitions for a redetermination of the deficiency set forth by the Commissioner of Internal Revenue in his notice of deficiency (IT:AR:B-2 BH-60D) dated March 3, 1934, and as the basis of this proceeding alleges as follows:

1. The petitioner is an individual residing at Elkins Park, Pennsylvania, and having an office at 419 York Road, Jenkintown, Pennsylvania.

2. The notice of deficiency (a copy of which is attached and marked Exhibit "A") was mailed to the petitioner on March 3, 1934.

3. The tax in controversy is income tax for the calendar year 1931, and the amount in controversy is $4259.94.

4. The determination of tax set forth in the said notice of deficiency is based upon the following error:

The Commissioner of Internal Revenue has refused to allow petitioner's claim for credit against his

income tax liability to the United States for income taxes paid or accrued to a foreign country.

5. The facts upon which the petitioner relies as the basis of this proceeding are as follows:

(a) Petitioner duly filed his individual income tax return for 1931 and claimed $5044.99 as a credit on line 54 thereof designated "Income tax paid to a foreign country or United States possession."

(b) Petitioner in support of his claim for credit filed Form 1116, "Claim for Credit on Individual Income Tax Return for Taxes Paid or Accrued to a Foreign Country or a Possession of the United States," and supporting documents as prescribed by the Commissioner of Internal Revenue. Petitioner received the sum of $31,777.54 as income from sources without the United States and so reported in his claim for credit on Form 1116.

(c) The income from sources without the United States consisted of the following items:

Dividends on stock of British-American Tobacco Company, Limited	$16,082.23
Dividends on stock of The Imperial Tobacco Company (of Great Britain and Ireland) Limited	13,910.30
Dividends on stock of Tobacco Securities Trust Company, Limited	1,018,30
Interest from sources within Great Britain	60.44
Interest from sources within France	706.27
	$31,777.54

(d) Pursuant to the income tax laws of Great Britain the British-American Tobacco Company, Limited, withheld $3743.98 from the dividends payable to

petitioner in 1931 and paid said amount to the Government of Great Britain as income tax of the petitioner on the dividends received from the British-American Tobacco Company, Limited.

(e) Pursuant to the income tax laws of Great Britain The Imperial Tobacco Company (of Great Britain and Ireland) Limited withheld $3071.86 from the dividends payable to petitioner in 1931 and paid said amount to the Government of Great Britain as income tax of the petitioner on the dividends received from The Imperial Tobacco Company (of Great Britain and Ireland) Limited.

(f) Pursuant to the income tax laws of Great Britain the Tobacco Securities Trust Company, Limited, withheld $201.27 from the dividends payable to petitioner in 1931 and paid said amount to the Government of Great Britain as income tax of the petitioner on the dividends received from Tobacco Securities Trust Company, Limited.

(g) The petitioner actually received in cash from British-American Tobacco Company, Limited, $12,338.25, from The Imperial Tobacco Company (of Great Britain and Ireland) Limited, $10,838.44, and from Tobacco Securities Trust Company, Limited, $817.03.

(h) The Special Commissioners of Income Tax of Great Britain assessed a surtax against the petitioner for the British tax year ending April 5, 1931, in the amount of £659 12s. 3d. This tax was an income tax imposed upon dividends received by petitioner from the British-American Tobacco Company, Limited, The Imperial Tobacco Company (of Great Britain and Ireland) Limited, and Tobacco Securities Trust Company, Limited, and was in addition to the tax withheld by said companies from petitioner's dividends and paid by them to the Government of Great Britain as income tax for petitioner's account.

(i) On December 14, 1931, petitioner duly paid the British surtax assessment. The amount so paid by petitioner was $2189.91, which, converted at the existing exchange rate of $3.32 per pound, satisfied the income tax liability of £659 12s. 3d.

(j) Of the total amount of income taxes paid to Great Britain, to wit, $9207.02, $5044.99 was claimed as a credit by the petitioner pursuant to Section 131 of the Revenue Act of 1928 and the balance, $4162.03, was claimed as a deduction.

(k) The respondent refused to allow the credit but allowed $5044.99 as a deduction in determining net taxable income.

WHEREFORE, the petitioner prays that this Board may hear the proceeding and determine that petitioner is entitled to a credit against income tax due the United States for income taxes paid to Great Britain.

(Sgd.) WM. R. SPOFFORD,
Counsel for Petitioner,
1035 Land Title Building,
Phila., Pa.

STATE OF PENNSYLVANIA,
COUNTY OF PHILADELPHIA, } *ss.:*

GEORGE W. ELKINS, being duly sworn, says that he is the petitioner above named; that he has read the foregoing petition and is familiar with the statements contained therein, and that the facts stated are true except as to those facts stated to be upon information and belief, and those facts he believes to be true.

GEORGE W. ELKINS.

Subscribed and sworn to before me this twenty-third day of April, 1934.

MARGARET L. McHUGH,
(Notarial Seal) *Notary Public.*
My commission expires January 14, 1937.

EXHIBIT "A".

TREASURY DEPARTMENT
Washington

Mar- 3 1934

Office of
Commissioner of
Internal Revenue

Mr. George W. Elkins,
419 York Road,
Jenkintown, Pennsylvania.

Sir:

You are advised that the determination of your income tax liability for the year(s) 1931, discloses a deficiency of $4,259.94 as shown in the statement attached.

In accordance with section 272 of the Revenue Act of 1928 notice is hereby given of the deficiency men-

tioned. Within sixty days (not counting Sunday as the sixtieth day) from the date of the mailing of this letter, you may petition the United States Board of Tax Appeals for a redetermination of the deficiency.

HOWEVER, IF YOU DO NOT DESIRE TO PETITION, you are requested to execute the enclosed form and forward it to the Commissioner of Internal Revenue, Washington, D. C., for the attention of IT:C:P-7. The signing of this form will expedite the closing of your return(s) by permitting an early assessment of any deficiency and preventing the accumulation of interest charges, since the interest period terminates thirty days after filing the form, or on the date assessment is made, whichever is earlier; WHEREAS IF THIS FORM IS NOT FILED, interest at the rate of 6% per annum will accumulate.

Respectfully,

Guy T. Helvering,
Commissioner.
By Chas. T. Russell (sgd.)
Deputy Commissioner.

Enclosures:
Statement
Form 870

STATEMENT

IT:AR:B-2
BH-60D

In re: Mr. George W. Elkins,
419 York Road,
Jenkintown, Pennsylvania.

INCOME TAX LIABILITY

Year	Income Tax Liability	Income Tax Assessed	Deficiency
1931	$33,013.55	$28,753.61	$4,259.94

Reference is made to the report of the internal revenue agent in charge, Philadelphia, Pennsylvania, covering your income tax liability for the year 1931, a copy of which was furnished you under date of June 19, 1933.

Income reported on your return, line 20		$211,649.41
Capital net gain reported, schedule D		1,493.19
Total income reported		$213,142.60
Add:		
Gain on redemption of bonds		1,500.00
Contributions adjusted		755.73
		$215,398.33
Less:		
Capital net gain transferred	$1,500.00	
Foreign tax	5,044.99	6,544.99
Adjusted net income		$208,853.34

COMPUTATION OF TAX

Adjusted net income		$208,853.34
Capital net loss		6.81
Income subject to surtax		$208,860.15
Less:		
Dividends	$235,231.79	
Interest on Liberty bonds	535.50	
Credit for dependents	800.00	236,567.29
Balance subject to normal tax		None
Surtax on $208,860.15		$33,432.03
Less:		
Tax at 12½% on capital net loss of $6.81		.85
Total income tax liability		$33,431.18

Less:		
Income tax paid at source		417.63
Income tax liability		$33,013.55
Income tax assessed:		
Original assessment	$28,665.51	
Additional assessment	88.10	28,753.61
Deficiency in tax		$4,259.94

The gain realized on the redemption of 100 shares of preferred stock of Public Service Gas and Electric Company constitutes ordinary income instead of capital net gain for the reason that the transaction does not represent a sale or exchange.

It is noted that you received income from foreign corporations as follows:

Dividends reported, line 11	$31,010.83
Interest reported, line 11	766.71
Total income reported	$31,777.54
Deduction for foreign taxes, line 14	4,162.03
Net income reported	$27,615.51
Credit for foreign taxes, line 54	5,044.99
Net amount received	$22,570.52

There is no provision in the Revenue Laws permitting an individual owning stock in a foreign corporation to claim as a deduction or a credit income tax assessed against a foreign corporation. This office holds that the income tax purported to have been withheld from dividend distributions by the British corporation was in fact the liability of the payer corporation. Therefore, the only amount that should be reported in gross income is the amount actually received or $22,-

570.52 and the amount of $4,162.03 claimed by you as a deduction and the amount of $5,044.99 claimed as a credit, have been disallowed.

The deduction for contributions has been adjusted to 15 per cent. of your corrected net income or $36,-857.67 instead of $37,613.40 claimed on your return.

Due to the fact that the expiration of the statute of limitations will presently bar any assessment of additional tax against you for the year 1931, the Income Tax Unit will be unable to afford you an opportunity to protest this determination or to be accorded a hearing prior to the mailing of this notice of deficiency.

ANSWER.

(Filed June 11, 1934.)

Now comes the Commissioner of Internal Revenue, the respondent herein, by his attorney, Robert H. Jackson, General Counsel, Bureau of Internal Revenue, and for answer to the petition heretofore filed in this proceeding admits and denies as follows:

1, 2 and 3. Admits the allegations contained in paragraphs 1, 2 and 3 of the petition.

4. Denies the error alleged in paragraph 4 of the petition.

5 (a) Admits the petitioner filed his individual income tax return for 1931 and claimed $5044.99 as a credit on line 54 thereof designated "Income tax paid to a foreign country or United States possession". Denies the remaining allegations contained in subparagraph (a) of paragraph 5 of the petition.

(b) Admits the petitioner filed Form 1116 "Claim for Credit on Individual Income Tax Return for Taxes

Paid or Accrued to a Foreign Country or a Possession of the United States". Denies the remaining allegations contained in subparagraph (b) of paragraph 5 of the petition.

(c) to (j), inclusive. Denies the allegations contained in subparagraphs (c) to (j), inclusive, of paragraph 5 of the petition.

(k) Admits the allegations contained in subparagraph (k) of paragraph 5 of the petition.

Denies generally and specifically each and every allegation contained in the petition not hereinabove expressly admitted, qualified or denied.

WHEREFORE, it is prayed that the petition be denied.

(Sgd.) ROBERT H. JACKSON,
General Counsel, Bureau of Internal Revenue,
Attorney for Respondent.

Of Counsel:
DEAN P. KIMBALL,
Special Attorney,
Bureau of Internal Revenue.

AGREED STATEMENT OF FACTS.

(Filed at Hearing November 12, 1934.)

IT IS HEREBY STIPULATED AND AGREED by and between the parties to this proceeding, through their respective counsel, that the following statement of facts is true and correct, without prejudice to the right of either party to present further or additional evidence not inconsistent herewith at the trial of this proceeding.

1. The petitioner, GEORGE W. ELKINS, is a natural born citizen of the United States, residing at Elkins Park, Pennsylvania, and filed his Federal income tax return for the tax year involved with the Collector of Internal Revenue at Philadelphia, Pennsylvania.

2. Throughout the calendar year 1931, the petitioner owned the following:

10,617 Ordinary shares of stock, (par value one pound each,) of the British-American Tobacco Company, Limited;

1,327 Ordinary shares of stock, par value one pound each, of Tobacco Securities Trust Company, Limited;

1,327 shares of Deferred stock, par value five shillings each, of Tobacco Securities Trust Company, Limited, and

9,500 Ordinary shares of stock, par value one pound each, of The Imperial Tobacco Company (of Great Britain and Ireland), Limited.

3. British-American Tobacco Company, Limited; Tobacco Securities Trust Company, Limited, and The Imperial Tobacco Company (of Great Britain and Ireland), Limited, are corporations organized and existing under the laws of Great Britain with their head offices in England.

4. During the calendar year ending December 31, 1931, British-American Tobacco Company, Limited, paid dividends on its Ordinary shares of stock as follows:

Jan. 19, 1931—Final to Sept. 30, 1930, one shilling, eight pence per share; (free of British Income Tax);

Jan. 19, 1931—Interim for the year to Sept. 30, 1931, ten pence per share (free of British Income Tax);

Mar. 31, 1931—Interim for the year to Sept. 30, 1931, ten pence per share; (free of British Income Tax);

June 30, 1931—Interim for the year to Sept. 30, 1931, ten pence per share; (free of United Kingdom Income Tax);

Sept. 30, 1931—Interim for the year to Sept. 30, 1931, ten pence per share; (free of United Kingdom Income Tax).

5. Petitioner actually received in cash as his share of the foregoing dividends the sum of 2654 pounds 5 shillings, which, when converted into United States money at the rate of exchange prevailing at the time of each distribution, amounted to $12,338.25.

6. The British-American Tobacco Company, Limited, by communications dated January 19, March 31, June 30 and September 30, 1931, certified to its shareholders, at the time of transmitting the warrants for the dividends referred to in paragraph 4, above, that British income taxes and/or United Kingdom income taxes, on the profits of the company of which the dividends formed a part, had been or would be paid by the Company to the proper officer for the receipt of taxes. These taxes were duly paid. The British income tax and/or United Kingdom income tax appropriate to the

petitioner's dividends here involved if there be any income tax at all with respect to said dividends aggregated 808 pounds 13 shillings. At the rate of exchange prevailing at the time of each dividend distribution the aggregate of 808 pounds 13 shillings, referred to herein, if converted into American dollars, would aggregate $3743.98. Photostatic copies of specimens of the several communications referred to herein are attached hereto and made a part hereof, marked Exhibits "A," "B," "C" and "D."

7. During the calendar year ending December 31, 1931, Tobacco Securities Trust Company, Limited, paid dividends on its Ordinary shares of stock as follows:

May 15, 1931—Five per cent. (less British Income Tax);

Dec. 10, 1931—Twelve and one-half per cent. (less United Kingdom Income Tax).

During the same period it paid a dividend on its Deferred stock at the rate of 6.857 pence per share (less United Kingdom Income Tax).

8. Petitioner actually received in cash as his share of the foregoing dividends the sum of 216 pounds 2 shillings 2 pence, which, when converted into United States money at the rate of exchange prevailing at the time of each distribution, amounted to $817.03.

9. The Tobacco Securities Trust Company, Limited, by communications dated May 15 and December 10, 1931, certified to the petitioner, at the time of transmitting the warrants for the dividends referred to in paragraph 7 above, that the British income taxes and/or United Kingdom income taxes, on the profits of the company of which the dividends formed a portion, had been or would be paid by the company to the proper officer for the receipt of taxes. These taxes were duly paid. The British income tax and/or United Kingdom

income tax appropriate to the petitioner's dividends here involved if there be any income tax at all with respect to said dividends, aggregated 54 pounds 7 pence. At the rate of exchange prevailing at the time of each dividend distribution, the aggregate of 54 pounds 7 pence, referred to herein, if converted into American dollars, would aggregate $201.27. Photostatic copies of the several communications referred to herein are attached hereto and made a part hereof, marked Exhibits "E" and "F."

10. Following the close of the calendar year 1931, there was furnished to Mr. George Garland Allen (not in any way connected with this case), by British-American Tobacco Company, Limited, and Tobacco Securities Trust Company, Limited, certain documents relating to the payment of dividends in 1931 by said companies, and British income tax appropriate thereto. Mr. Allen filed the originals of these documents with the Commissioner of Internal Revenue, through the Collector of Internal Revenue at Albany, New York, on March 14, 1932, and under arrangements made with the Bureau of Internal Revenue printed copies of said documents were prepared and distributed to stockholders of the said companies, upon request. True and correct copies of the documents furnished to and filed by Mr. Allen, designated Exhibits "G" and "H," respectively, are attached hereto and made a part hereof.

11. During the calendar year ending December 31, 1931, The Imperial Tobacco Company (of Great Britain and Ireland), Limited, paid dividends on its ordinary shares of stock as follows:

Feb. 28, 1931—Final for year ended October 31, 1930, nine per cent., together with a bonus of 1s. 6d. per share. (Both free of Income Tax @ 4s. 5d. in the £).

Aug. 31, 1931—Interim for the year ended October 31, 1931, seven per cent., (free of Income Tax @ 4s. 5d. in the £).

12. Petitioner actually received in cash as his share of the foregoing dividends the sum of 2232 pounds 10 shillings, which, when converted into United States money at the rate of exchange prevailing at the time of each distribution, amounted to $10,838.44.

13. The Imperial Tobacco Company (of Great Britain and Ireland), Limited, by communications dated February 28 and August 31, 1931, certified to the petitioner at the time of transmitting the warrants for the dividends referred to in paragraph 11 above, that British income taxes on the profits of the company of which the dividends formed a part had been or would be paid by the company to the proper officer for the receipt of taxes. These taxes were duly paid. The British income tax appropriate to the petitioner's dividends here involved if there be any income tax at all with respect to said dividends, aggregated 632 pounds 14 shillings and 10 pence. At the rate of exchange prevailing at the time of each dividend distribution, the aggregate of 632 pounds 14 shillings and 10 pence, referred to herein, if converted into American dollars, would aggregate $3071.86. Photostatic copies of the several communications referred to herein are attached hereto and made a part hereof, marked Exhibits "I" and "J."

14. Following the close of the calendar year 1931, The Imperial Tobacco Company (of Great Britain and Ireland), Limited, furnished to the Commonwealth Improvement Company, a corporation organized and existing under the laws of the State of Pennsylvania (not in any way connected with this case), certain documents relating to the payment of dividends in 1931 and

British income tax appropriate thereto. The Commonwealth Improvement Company filed the originals of these documents with the Commissioner of Internal Revenue, through the Collector of Internal Revenue at Philadelphia, Pennsylvania, on April 9, 1932, and under arrangements made with the Bureau of Internal Revenue printed copies of said documents were prepared and distributed to stockholders of The Imperial Tobacco Company (of Great Britain and Ireland), Limited, upon request. A true and correct copy of these documents so filed by the Commonwealth Improvement Company, designated as Exhibit "K" is attached hereto and made a part hereof.

15. On April 28, 1931, petitioner transmitted a return of income for surtax covering the year ended April 5, 1931, to the Department of Inland Revenue of the British Government. In this return petitioner reported as his income subject to surtax the amount of the dividends actually received by him in cash from the British-American Tobacco Company, Limited, Tobacco Securities Trust Company, Limited, and The Imperial Tobacco Company (of Great Britain and Ireland), Limited, during the year ended April 5, 1931, plus the amount of British income Taxes and/or United Kingdom income taxes appropriate to the said dividends which the British-American Tobacco Company, Limited, Tobacco Securities Trust Company, Limited, and The Imperial Tobacco Company (of Great Britain and Ireland), Limited, certified as having been paid or as would be paid by the respective companies to the proper officer for the receipt of taxes. Said return reported gross income of 6591 pounds 19 shillings and 1 pence received by petitioner during the year ended April 5, 1931, and subject to British surtax.

16. Under date of October 23, 1931, the Special Commissioners of Income Tax of Great Britain as-

sessed a surtax against petitioner based upon said return amounting to 659 pounds, 12 shillings and 3 pence. A true and correct copy of the "Notice of Assessment under the Income Tax Acts by the Special Commissioners" received by petitioner evidencing the assessment made against him, designated as Exhibit "L" is attached hereto and made a part hereof.

17. On December 14, 1931, the petitioner paid the said sum of 659 pounds, 12 shillings and 3 pence to the Department of Inland Revenue of Great Britain and received a receipt therefor; a true copy thereof designated Exhibit "M" is attached hereto and made a part hereof. The tax so paid amounted to $2189.91 in United States money, which was the actual amount paid by petitioner in satisfaction of this liability.

18. A true copy of the income tax return filed by petitioner with the Commissioner of Internal Revenue, through the Collector of Internal Revenue at Philadelphia, Pennsylvania, for the calendar year 1931, designated as Exhibit "N", is attached hereto and made a part hereof. Petitioner reported $31,010.83 as dividends received from foreign corporations in his income tax return for the calendar year 1931 (Item 11 (a), Exhibit "N" hereof). This amount was made up in the following manner:

	Net Amount Received in Cash	Amounts claimed by Petitioner to represent British Tax withheld	Total
British-American Tobacco Company, Ltd.	$12,338.25	$3,743.98	$16,082.23
Tobacco Securities Trust Company, Ltd.	817.03	201.27	1,018.30
The Imperial Tobacco Company (of Great Britain and Ireland), Ltd.	10,838.44	3,071.86	13,910.30
	$23,993.72	$7,017.11	$31,010.83

19. A true copy of Form 1116 "CLAIM FOR CREDIT ON INDIVIDUAL INCOME TAX RETURN FOR TAXES PAID OR ACCRUED TO A FOREIGN COUNTRY OR A POSSESSION OF THE UNITED STATES" filed by the petitioner for the taxable year 1931, with the Commissioner of Internal Revenue, through the Collector of Internal Revenue at Philadelphia, Pennsylvania, designated Exhibit "O" is attached hereto and made a part hereof.

20. Petitioner claimed the sum of $5044.99 as a credit against income tax due the United States for 1931 on account of income tax alleged to have been paid to Great Britain and claimed a deduction of $4162.03 on account of income tax alleged to have been paid to Great Britain. Respondent has refused to allow any of said amount of $5044.99 as a credit. He has, however, excluded from gross income, the said sum of $5044.99, and instead of allowing the sum of $4162.03 as a deduction, as claimed by petitioner, has considered the amount as an exclusion from gross income. The total thus excluded from gross income, to wit, $9207.02, is made up of the items of $2189.91 (par. 17) and $7017.11 (par. 18).

21. Petitioner's accounts were kept on the basis of cash receipts and disbursements, and his income tax return was prepared accordingly.

ROBERT H. JACKSON,
Assistant General Counsel for the Bureau of Internal Revenue.
WM. R. SPOFFORD,
Attorney for Petitioner.

Dated November 12, 1934,
Washington, D. C.

EXHIBIT "A". 25

BRITISH-AMERICAN TOBACCO COMPANY, LIMITED.

WESTMINSTER HOUSE.
7, MILLBANK,
LONDON, S.W.1.

NO. 19946

19th January, 1931.

TO

137
&
138

Dear Sir or Madam,

We have pleasure in enclosing *warrant for the Final Dividend of 1/8 per share (free of British Income Tax) for the year ended 30th September, 1930, and an Interim Dividend of 10d. per share (free of British Income Tax) for the year ending 30th September, 1931, which on ..... Registered ORDINARY SHARES amounts to — £ : :

The above Dividends are equivalent to a gross amount of — —, — £ : : and the Income Tax appropriate thereto (see memorandum) is equal to — £ : :

} For 1000 Shares or less see back hereof.

We hereby certify that Income Tax on the Profits of the Company of which Profits these dividends form a portion has been, or will be paid by the Company to the proper Officer for the receipt of Taxes.

Yours faithfully,
BRITISH-AMERICAN TOBACCO COMPANY, LIMITED.
A. M. RICKARDS,
Secretary.

*In cases where mandates have been lodged with the Company, warrants have been forwarded accordingly.

Application for a duplicate of this Certificate must be accompanied by a fee of one shilling.

MEMORANDUM.

The rate of British Income Tax applying to the Dividends for the year ended 30th September, 1930, is 4/1 in the £ (viz. the standard rate of 4s. 6d. in the £ less 5d. relief in respect of Dominion Income Tax, i.e., 5d. for the year to 5th April, 1930, and 5d. for the year to 5th April, 1931, which has been or will be allowed to the Company under Section 27 of the Finance Act, 1920).

The rate of British Income Tax applying to the Dividends for the year ending 30th September, 1931, is at present 4s. 1d. in the £ (viz. the standard rate of 4s. 6d. in the £ less 5d. relief in respect of Dominion Income Tax, i.e., 5d. for the year to 5th April, 1931, and 5d. for the year to 5th April, 1932).

The gross amount per share of the two dividends as below and the Income Tax per share applying thereto is arrived at as follow :—

	Final dividend for year to 30th Sept., 1930.	Interim dividend for the year to 30th Sept., 1931	TOTAL
	s. d.	s. d.	s. d.
Net dividend per £1 share free of Income Tax —	1 8	.10	2 6
Add Income Tax on gross amount — — —	at 4 1 in £ 5·1309	at 4 1 in £ 2·5654	7·6963
Gross amount per share	2 1·1309	1 0·5654	3 1·6963

N.B. THIS PART TO BE RETAINED BY THE SHAREHOLDER.

SHAREHOLDERS CLAIMING RELIEF FROM BRITISH INCOME TAX ARE INFORMED THAT THE INLAND REVENUE AUTHORITIES WILL ACCEPT THIS STATEMENT AS PROOF OF PAYMENT OF BRITISH INCOME TAX AND IT SHOULD THEREFORE BE PRESERVED.

Page Tightly Bound

EXHIBIT "B". 29

BRITISH-AMERICAN TOBACCO COMPANY. LIMITED.

WESTMINSTER HOUSE.
7. MILLBANK.
LONDON. S.W.1.

No. 293

TO

31st March, 1931.

139

Dear Sir or Madam,

We have pleasure in enclosing *Warrant for the Second Interim Dividend (free of British Income Tax) of 10d. for each £1 of Ordinary Stock for the year ending 30th September, 1931, which on £ . Registered* **ORDINARY STOCK** *amounts to* £ : :

The above Dividend is equivalent to a gross amount of ... £ : : *and the Income Tax appropriate thereto @ 4/1 in £ is equal to* ... £ : :

For £1,000 Stock or less see back hereof.

We hereby certify that Income Tax on the Profits of the Company of which Profits this dividend forms a portion has been, or will be paid by the Company to the proper Officer for the receipt of Taxes.

Yours faithfully,

BRITISH-AMERICAN TOBACCO COMPANY. LIMITED.

A. M. RICKARDS,
Secretary.

*In cases where mandates have been lodged with the Company, warrants have been forwarded accordingly.

Application for a duplicate of this Certificate must be accompanied by a fee of one shilling.

MEMORANDUM.

The rate of British Income Tax applying to the Dividends for the year ending 30th September, 1931, is, at present, 4s. 1d. in the £ viz. the standard rate of 4s. 6d. in the £ less 5d. relief in respect of Dominion Income Tax, i.e., 5d. for the year to 5th April, 1931, and 5d. for the year to 5th April, 1932.

The gross amount per £1 of Stock and the Income Tax applying thereto is arrived at as follows:

	s. d.
Net dividend per £1 of Stock free of Income Tax	0 10
Add Income Tax on gross amount at 4/1 in £	2·5654
Gross amount per £1 of Stock	1 . 0·5654

N.B. THIS PART TO BE RETAINED BY THE STOCKHOLDER.

STOCKHOLDERS CLAIMING RELIEF FROM BRITISH INCOME TAX ARE INFORMED THAT THE INLAND REVENUE AUTHORITIES WILL ACCEPT THIS STATEMENT AS PROOF OF PAYMENT OF BRITISH INCOME TAX AND IT SHOULD THEREFORE BE PRESERVED.

E13

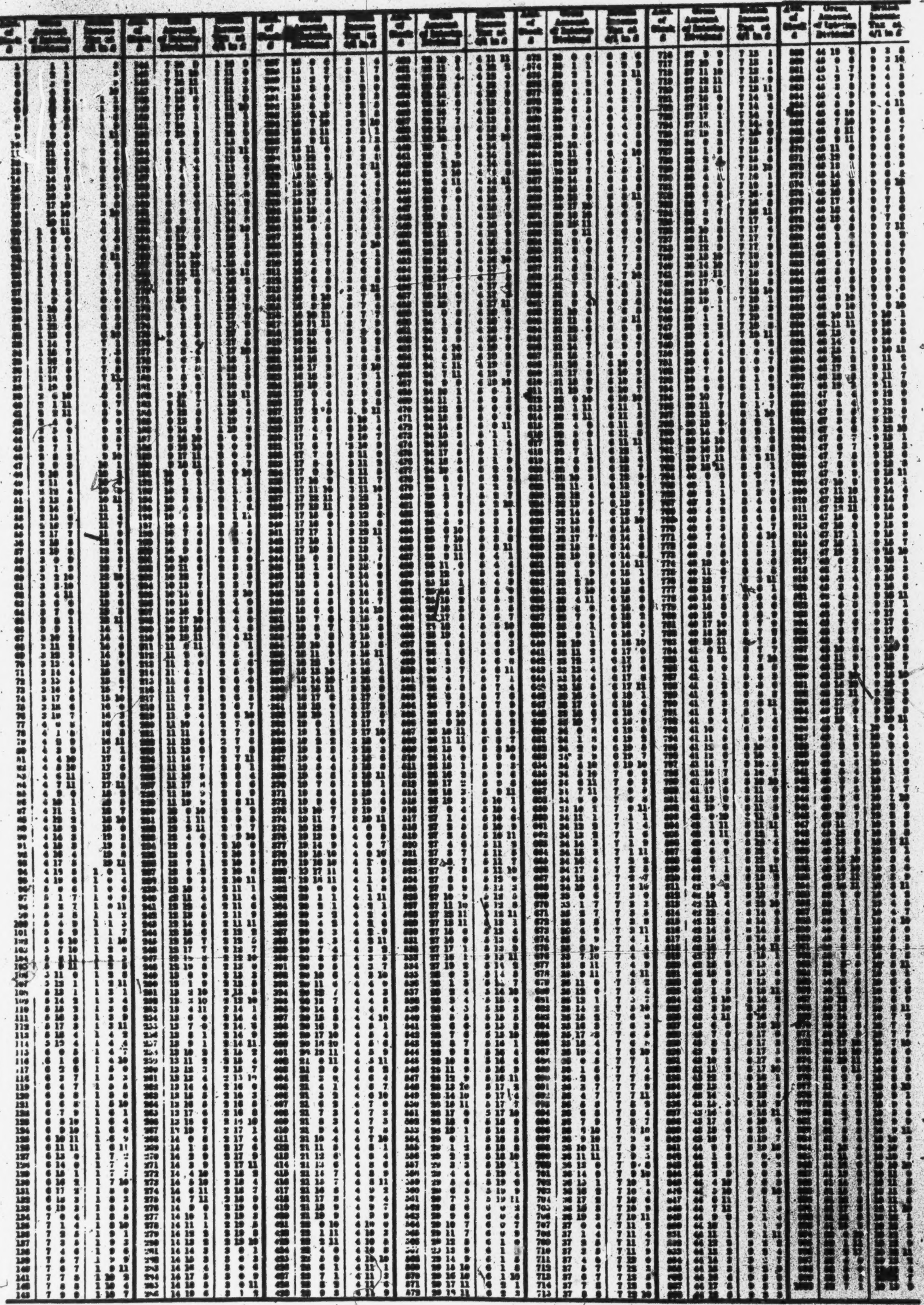


EXHIBIT "O". 33

BRITISH-AMERICAN TOBACCO COMPANY. LIMITED.

WESTMINSTER HOUSE,
7, MILLBANK,
LONDON, S.W.1.

No. 288

TO

30th June, 1931.

(140)

Dear Sir or Madam,

*We have pleasure in enclosing *Warrant for the Third Interim Dividend (free of United Kingdom Income Tax) of 10d. for each £1 of Ordinary Stock for the year ending 30th September, 1931, which on*

£ *Registered ORDINARY STOCK amounts to* £ : :

The above Dividend is equivalent to a gross amount of — — — — £ : : *and the Income Tax appropriate thereto @ 4/1 in £ is equal to* — — — £ : :

For £1,000 Stock or less see back hereof.

We hereby certify that Income Tax on the Profits of the Company of which Profits this dividend forms a portion has been, or will be paid by the Company to the proper Officer for the receipt of Taxes

Yours faithfully,

BRITISH-AMERICAN TOBACCO COMPANY, LIMITED.

A. M. RICKARDS,
Secretary.

**In cases where mandates have been lodged with the Company, warrants have been forwarded accordingly.*

MEMORANDUM.

The rate of United Kingdom Income Tax applying to the Dividends for the year ending 30th September, 1931, is 4s. 1d. in the £ (viz. the standard rate of 4s. 6d. in the £ less 5d. relief in respect of Dominion Income Tax, *i.e.*, 5d. for the year to 5th April, 1931, and 5d. for the year to 5th April, 1932).

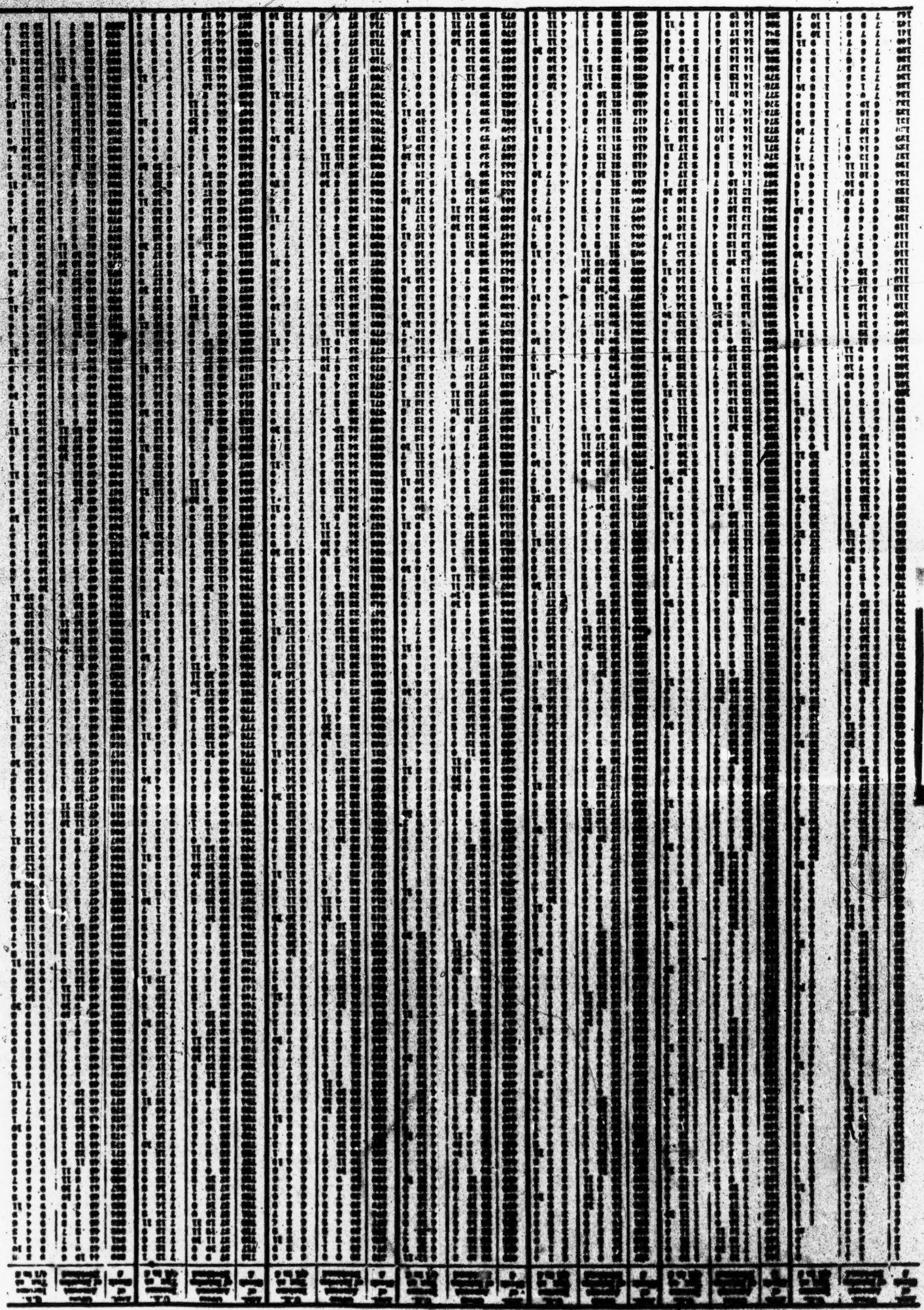
The gross amount per £1 of Stock and the Income Tax applying thereto is arrived at as follows:—

	s. d.
Net dividend free of Income Tax per £1 of Stock...	10
Add Income Tax on gross amount at 4/1 in £	2·5654
Gross amount per £1 of Stock	1 . 0·5654

N.B. THIS PART TO BE RETAINED BY THE STOCKHOLDER.

STOCKHOLDERS CLAIMING RELIEF FROM UNITED KINGDOM INCOME TAX ARE INFORMED THAT THE INLAND REVENUE AUTHORITIES WILL ACCEPT THIS STATEMENT AS PROOF OF PAYMENT OF UNITED KINGDOM INCOME TAX AND IT SHOULD THEREFORE BE PRESERVED.

Application for a duplicate of this Certificate must be accompanied by a fee of one shilling.



Page Tightly Bound

EXHIBIT "D". 37

BRITISH-AMERICAN TOBACCO COMPANY, LIMITED.

WESTMINSTER HOUSE.
7, MILLBANK.
LONDON, S.W.1. 30th September, 1931.

No. 297

TO

141

Dear Sir or Madam,

We have pleasure in enclosing *Warrant for the Fourth Interim Dividend (free of United Kingdom Income Tax) of 10d. for each £1 of Ordinary Stock for the year ending 30th September, 1931, which on £ Registered ORDINARY STOCK amounts to £ : :

The above Dividend is equivalent to a gross amount of — — — — £ : : } For £1,000 Stock or less see back hereof.
and the Income Tax appropriate thereto @ 4/7 in £ is equal to — — — £ : :

We hereby certify that Income Tax on the Profits of the Company of which Profits this dividend forms a portion has been, or will be paid by the Company to the proper Officer for the receipt of Taxes.

Yours faithfully,
BRITISH-AMERICAN TOBACCO COMPANY, LIMITED.
A. M. RICKARDS,
Secretary.

*In cases where mandates have been lodged with the Company, warrants have been forwarded accordingly.

MEMORANDUM.

The rate of United Kingdom Income Tax applying to the Dividends for the year ending 30th September, 1931, is 4s. 7d. in the £ (viz. the standard rate of 5s. 0d. in the £ less 5d. relief in respect of Dominion Income Tax, *i.e.*, 5d. for the year to 5th April, 1931, and 5d. for the year to 5th April, 1932).

The gross amount per £1 of Stock and the Income Tax applying thereto is arrived at as follows:—

	s. d.
Net dividend free of Income Tax per £1 of Stock ..	10
Add Income Tax on gross amount at 4/7 in £	·2·9729
Gross amount per £1 of Stock	1.0·9729

N.B. THIS PART TO BE RETAINED BY THE STOCKHOLDER.

STOCKHOLDERS CLAIMING RELIEF FROM UNITED KINGDOM INCOME TAX ARE INFORMED THAT THE INLAND REVENUE AUTHORITIES WILL ACCEPT THIS STATEMENT AS PROOF OF PAYMENT OF UNITED KINGDOM INCOME TAX AND IT SHOULD THEREFORE BE PRESERVED.

6/17

Page Tightly Bound

Owing to the alteration in the Standard Rate of Income Tax from 4s. 6d. to 5s. in the £ this table should be used also for the purpose of arriving at the gross amount and the U.K. Income Tax applying thereto in respect of the dividend paid on the 30th June, 1951.

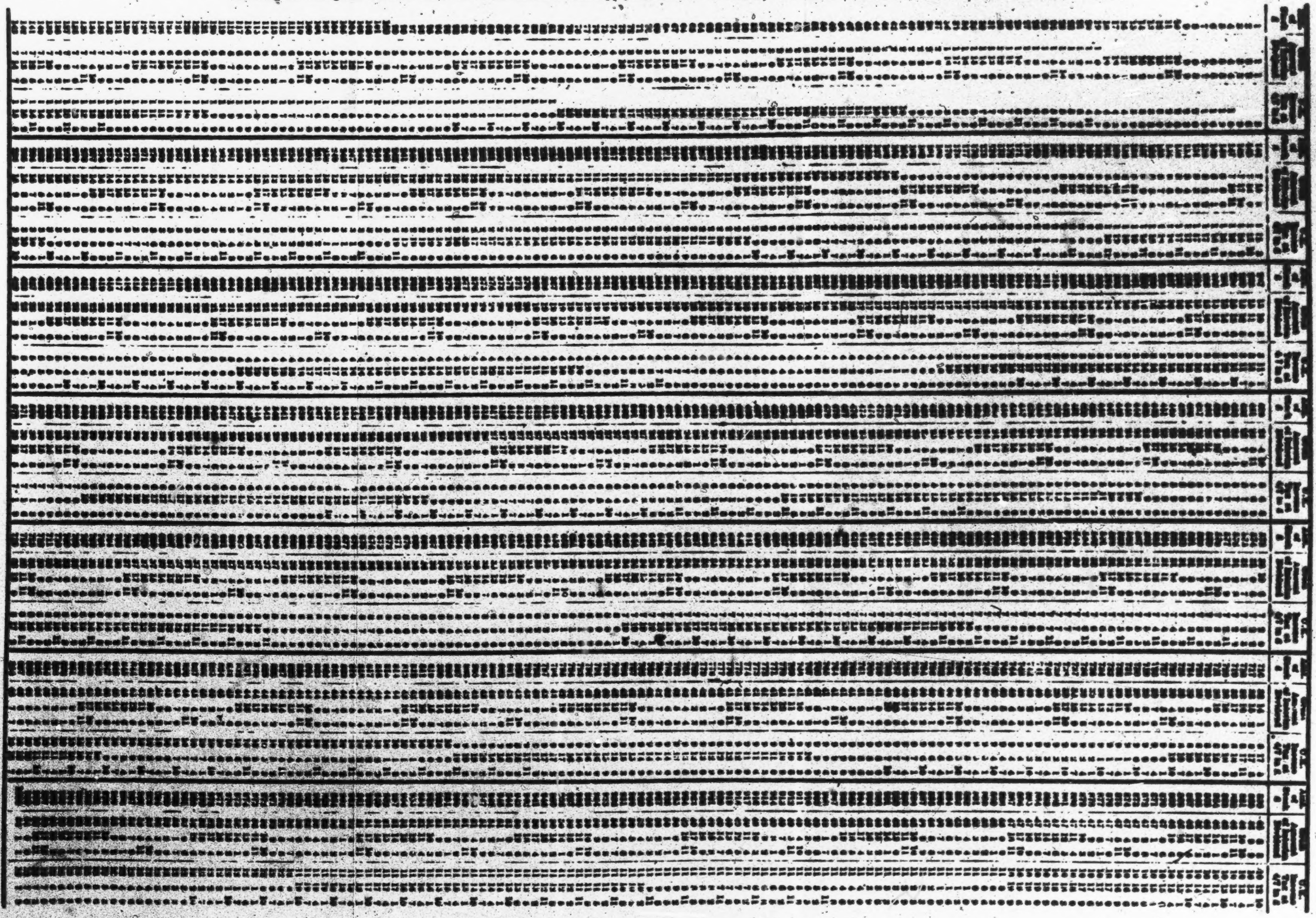


EXHIBIT "E". 41

TOBACCO SECURITIES TRUST COMPANY, LIMITED.

WESTMINSTER HOUSE.
7, MILLBANK,
LONDON, S.W.1.

No. 4424

15th May, 1931.

TO

GEORGE W. ELKINS, ESQ.,
419, YORK ROAD,
O.D. JENKINTOWN,
PENNSYLVANIA, U.S.A.

0.5

Dear Sir or Madam,

We have pleasure in enclosing *Warrant for an Interim dividend of 5 per cent. (less British Income Tax) for the year ending 31st October, 1931, upon £1327 ORDINARY STOCK as follows:—

Gross amount of Dividend — — —	£66 : 7 : -	For £1,000 Stock or less see table on the back hereof.
LESS British Income Tax at 3/6 in the £ —	£11 : 12 : 3	
Net amount of Warrant — — — —	£54 : 14 : 9	

We hereby certify that Income Tax on the Profits of the Company of which Profits this dividend forms a portion has been, or will be paid by the Company to the proper Officer for the receipt of taxes.

Yours faithfully,

TOBACCO SECURITIES TRUST COMPANY, LIMITED.

E. A. BLOCKLEY,
Secretary.

*In cases where mandates have been lodged with the Company, warrants have been forwarded accordingly.

The rate of British Income Tax applying to this dividend is 3/6 in the £ (i.e. the standard rate of 4/6 less 1/- estimated relief in respect of Dominion Income Tax which has been or will be allowed to the Company under Section 27 of the Finance Act, 1920).

N.B.—THIS PART TO BE RETAINED BY THE STOCKHOLDER

STOCKHOLDERS CLAIMING RELIEF FROM BRITISH INCOME TAX ARE INFORMED THAT THE INLAND REVENUE AUTHORITIES WILL ACCEPT THIS STATEMENT AS PROOF OF PAYMENT OF BRITISH INCOME TAX AND IT SHOULD THEREFORE BE PRESERVED.

TOBACCO SECURITIES TRUST COMPANY, LIMITED.

WESTMINSTER HOUSE,
7, MILLBANK,
LONDON, S.W.1.

No. 4381

10th December, 1931.

TO GEORGE W. ELKINS, ESQ.,
419, YORK ROAD,
O.D. JENKINTOWN,
PENNSYLVANIA, U.S.A.

06
D3

Dear Sir or Madam,

We have pleasure in enclosing *Warrant for £161 : 7 : 5 in respect of Dividends (less United Kingdom Income Tax) for the year ended 31st October, 1931, as follows:—

Final Dividend.

12½ % on £1324 Ordinary Stock (making 17½ % for the year) — .... £165:14:6 | For £500 of Stock or less see back hereof.

First and Final Dividend.

6·857 on each 5/- of £331 : 15 Deferred Stock £ 34:18:3 | For £125 of Stock or less see back hereof.

£203:15:9

Less United Kingdom Income Tax .... £ 42:8:4
(See Memorandum below.)

We hereby certify that Income Tax on the Profits of the Company of which Profits this dividend forms a portion has been, or will be paid by the Company to the proper Officer for the receipt of taxes.

Yours faithfully,

TOBACCO SECURITIES TRUST COMPANY, LIMITED.

E. A. BLOCKLEY,
Secretary.

*In cases where mandates have been lodged with the Company, warrants have been forwarded accordingly.

Application for a duplicate of this Certificate must be accompanied by a fee of one shilling.

INCOME TAX MEMORANDUM.

Owing to the increase in the Standard Rate of United Kingdom Income Tax for the year ending 5th April, 1932, from 4/6 to 5/- in the £, the Income Tax applying to the above dividends is as stated below:—

ORDINARY CAPITAL—FINAL DIVIDEND, Income Tax @ 4 2.4 in the £, i.e., 4/- in the £ (the Standard Rate of 5/- in the £, less 1/- relief in respect of Dominion Income Tax, which has been or will be allowed to the Company under Section 27 of the Finance Act, 1920) and 6d. in the £ under deducted in respect of the 5% Interim Dividend paid 15th May, 1931.

DEFERRED CAPITAL—FIRST AND FINAL DIVIDEND, Income Tax @ 4/- in the £ (the Standard Rate of 5/- in the £, less 1/- relief in respect of Dominion Income Tax, which has been or will be allowed to the Company under Section 27 of the Finance Act, 1920).

N.B. THIS PART TO BE RETAINED BY THE STOCKHOLDER.
STOCKHOLDERS CLAIMING RELIEF FROM UNITED KINGDOM INCOME TAX ARE INFORMED THAT THE INLAND REVENUE AUTHORITIES WILL ACCEPT THIS STATEMENT AS PROOF OF PAYMENT OF UNITED KINGDOM INCOME TAX AND IT SHOULD THEREFORE BE PRESERVED.

£21

EXHIBIT "F" 2nd page

Ordinary Capital Dividend @ 12½%.

Amount of Stock £ s.	Gross Amount of Dividend £ s. d.	Income Tax at 4/3-4 in £ £ s. d.
1 0	2 6	1 3
1 5	2 9	1 6
1 10	2 11	1 7
1 15	3 1	1 8
2 0	3 4	1 10
2 5	3 6	1 11
2 10	3 8	1 12
2 15	3 11	1 13
3 0	3 13	1 14
3 5	3 15	1 15
3 10	4 0	2 0
3 15	4 2	2 1
4 0	4 4	2 2
4 5	4 6	2 3
4 10	4 9	2 4
4 15	4 11	2 5
5 0	4 13	2 6
5 5	4 15	2 7
5 10	5 0	2 8
5 15	5 2	2 9
6 0	5 4	2 10
6 5	5 7	2 11
6 10	5 9	2 12
6 15	5 11	2 13
7 0	5 13	2 14
7 5	5 15	2 15
7 10	6 0	3 0
7 15	6 2	3 1
8 0	6 4	3 2
8 5	6 7	3 3
8 10	6 9	3 4
8 15	6 11	3 5
9 0	6 13	3 6
9 5	6 15	3 7
9 10	7 0	3 8
9 15	7 2	3 9
10 0	7 4	3 10
10 5	7 7	3 11
10 10	7 9	3 12
10 15	7 11	3 13
11 0	7 13	3 14
11 5	7 15	3 15
11 10	8 0	4 0
11 15	8 2	4 1
12 0	8 4	4 2
12 5	8 7	4 3
12 10	8 9	4 4
12 15	8 11	4 5
13 0	8 13	4 6
13 5	8 15	4 7
13 10	9 0	4 8
13 15	9 2	4 9
14 0	9 4	4 10
14 5	9 7	4 11
14 10	9 9	4 12
14 15	9 11	4 13
15 0	9 13	4 14
15 5	9 15	4 15
15 10	10 0	5 0
15 15	10 2	5 1
16 0	10 4	5 2
16 5	10 7	5 3
16 10	10 9	5 4
16 15	10 11	5 5
17 0	10 13	5 6
17 5	10 15	5 7
17 10	11 0	5 8
17 15	11 2	5 9
18 0	11 4	5 10
18 5	11 7	5 11
18 10	11 9	5 12
18 15	11 11	5 13
19 0	11 13	5 14
19 5	11 15	5 15
19 10	12 0	6 0
19 15	12 2	6 1
20 0	12 4	6 2
20 5	12 7	6 3
20 10	12 9	6 4
20 15	12 11	6 5
21 0	12 13	6 6
21 5	12 15	6 7
21 10	13 0	6 8
21 15	13 2	6 9
22 0	13 4	6 10
22 5	13 7	6 11
22 10	13 9	6 12
22 15	13 11	6 13
23 0	13 13	6 14
23 5	13 15	6 15
23 10	14 0	7 0
23 15	14 2	7 1
24 0	14 4	7 2
24 5	14 7	7 3
24 10	14 9	7 4
24 15	14 11	7 5
25 0	14 13	7 6
25 5	14 15	7 7
25 10	15 0	7 8
25 15	15 2	7 9
26 0	15 4	7 10
26 5	15 7	7 11
26 10	15 9	7 12
26 15	15 11	7 13
27 0	15 13	7 14
27 5	15 15	7 15
27 10	16 0	8 0
27 15	16 2	8 1
28 0	16 4	8 2
28 5	16 7	8 3
28 10	16 9	8 4
28 15	16 11	8 5
29 0	16 13	8 6
29 5	16 15	8 7
29 10	17 0	8 8
29 15	17 2	8 9
30 0	17 4	8 10
30 5	17 7	8 11
30 10	17 9	8 12
30 15	17 11	8 13
31 0	17 13	8 14
31 5	17 15	8 15
31 10	18 0	9 0
31 15	18 2	9 1
32 0	18 4	9 2
32 5	18 7	9 3
32 10	18 9	9 4
32 15	18 11	9 5
33 0	18 13	9 6
33 5	18 15	9 7
33 10	19 0	9 8
33 15	19 2	9 9
34 0	19 4	9 10
34 5	19 7	9 11
34 10	19 9	9 12
34 15	19 11	9 13
35 0	19 13	9 14
35 5	19 15	9 15
35 10	20 0	10 0
35 15	20 2	10 1
36 0	20 4	10 2
36 5	20 7	10 3
36 10	20 9	10 4
36 15	20 11	10 5
37 0	20 13	10 6
37 5	20 15	10 7
37 10	21 0	10 8
37 15	21 2	10 9
38 0	21 4	10 10
38 5	21 7	10 11
38 10	21 9	10 12
38 15	21 11	10 13
39 0	21 13	10 14
39 5	21 15	10 15
39 10	22 0	11 0
39 15	22 2	11 1
40 0	22 4	11 2
40 5	22 7	11 3
40 10	22 9	11 4
40 15	22 11	11 5
41 0	22 13	11 6
41 5	22 15	11 7
41 10	23 0	11 8
41 15	23 2	11 9
42 0	23 4	11 10
42 5	23 7	11 11
42 10	23 9	11 12
42 15	23 11	11 13
43 0	23 13	11 14
43 5	23 15	11 15
43 10	24 0	12 0
43 15	24 2	12 1
44 0	24 4	12 2
44 5	24 7	12 3
44 10	24 9	12 4
44 15	24 11	12 5
45 0	24 13	12 6
45 5	24 15	12 7
45 10	25 0	12 8
45 15	25 2	12 9
46 0	25 4	12 10
46 5	25 7	12 11
46 10	25 9	12 12
46 15	25 11	12 13
47 0	25 13	12 14
47 5	25 15	12 15
47 10	26 0	13 0
47 15	26 2	13 1
48 0	26 4	13 2
48 5	26 7	13 3
48 10	26 9	13 4
48 15	26 11	13 5
49 0	26 13	13 6
49 5	26 15	13 7
49 10	27 0	13 8
49 15	27 2	13 9
50 0	27 4	13 10
50 5	27 7	13 11
50 10	27 9	13 12
50 15	27 11	13 13
51 0	27 13	13 14
51 5	27 15	13 15
51 10	28 0	14 0
51 15	28 2	14 1
52 0	28 4	14 2
52 5	28 7	14 3
52 10	28 9	14 4
52 15	28 11	14 5
53 0	28 13	14 6
53 5	28 15	14 7
53 10	29 0	14 8
53 15	29 2	14 9
54 0	29 4	14 10
54 5	29 7	14 11
54 10	29 9	14 12
54 15	29 11	14 13
55 0	29 13	14 14
55 5	29 15	14 15
55 10	30 0	15 0
55 15	30 2	15 1
56 0	30 4	15 2
56 5	30 7	15 3
56 10	30 9	15 4
56 15	30 11	15 5
57 0	30 13	15 6
57 5	30 15	15 7
57 10	31 0	15 8
57 15	31 2	15 9
58 0	31 4	15 10
58 5	31 7	15 11
58 10	31 9	15 12
58 15	31 11	15 13
59 0	31 13	15 14
59 5	31 15	15 15
59 10	32 0	16 0
59 15	32 2	16 1
60 0	32 4	16 2
60 5	32 7	16 3
60 10	32 9	16 4
60 15	32 11	16 5
61 0	32 13	16 6
61 5	32 15	16 7
61 10	33 0	16 8
61 15	33 2	16 9
62 0	33 4	16 10
62 5	33 7	16 11
62 10	33 9	16 12
62 15	33 11	16 13
63 0	33 13	16 14
63 5	33 15	16 15
63 10	34 0	17 0
63 15	34 2	17 1
64 0	34 4	17 2
64 5	34 7	17 3
64 10	34 9	17 4
64 15	34 11	17 5
65 0	34 13	17 6
65 5	34 15	17 7
65 10	35 0	17 8
65 15	35 2	17 9
66 0	35 4	17 10
66 5	35 7	17 11
66 10	35 9	17 12
66 15	35 11	17 13
67 0	35 13	17 14
67 5	35 15	17 15
67 10	36 0	18 0
67 15	36 2	18 1
68 0	36 4	18 2
68 5	36 7	18 3
68 10	36 9	18 4
68 15	36 11	18 5
69 0	36 13	18 6
69 5	36 15	18 7
69 10	37 0	18 8
69 15	37 2	18 9
70 0	37 4	18 10
70 5	37 7	18 11
70 10	37 9	18 12
70 15	37 11	18 13
71 0	37 13	18 14
71 5	37 15	18 15
71 10	38 0	19 0
71 15	38 2	19 1
72 0	38 4	19 2
72 5	38 7	19 3
72 10	38 9	19 4
72 15	38 11	19 5
73 0	38 13	19 6
73 5	38 15	19 7
73 10	39 0	19 8
73 15	39 2	19 9
74 0	39 4	19 10
74 5	39 7	19 11
74 10	39 9	19 12
74 15	39 11	19 13
75 0	39 13	19 14
75 5	39 15	19 15
75 10	40 0	20 0
75 15	40 2	20 1
76 0	40 4	20 2
76 5	40 7	20 3
76 10	40 9	20 4
76 15	40 11	20 5
77 0	40 13	20 6
77 5	40 15	20 7
77 10	41 0	20 8
77 15	41 2	20 9
78 0	41 4	20 10
78 5	41 7	20 11
78 10	41 9	20 12
78 15	41 11	20 13
79 0	41 13	20 14
79 5	41 15	20 15
79 10	42 0	21 0
79 15	42 2	21 1
80 0	42 4	21 2
80 5	42 7	21 3
80 10	42 9	21 4
80 15	42 11	21 5
81 0	42 13	21 6
81 5	42 15	21 7
81 10	43 0	21 8
81 15	43 2	21 9
82 0	43 4	21 10
82 5	43 7	21 11
82 10	43 9	21 12
82 15	43 11	21 13
83 0	43 13	21 14
83 5	43 15	21 15
83 10	44 0	22 0
83 15	44 2	22 1
84 0	44 4	22 2
84 5	44 7	22 3
84 10	44 9	22 4
84 15	44 11	22 5
85 0	44 13	22 6
85 5	44 15	22 7
85 10	45 0	22 8
85 15	45 2	22 9
86 0	45 4	22 10
86 5	45 7	22 11
86 10	45 9	22 12
86 15	45 11	22 13
87 0	45 13	22 14
87 5	45 15	22 15
87 10	46 0	23 0
87 15	46 2	23 1
88 0	46 4	23 2
88 5	46 7	23 3
88 10	46 9	23 4
88 15	46 11	23 5
89 0	46 13	23 6
89 5	46 15	23 7
89 10	47 0	23 8
89 15	47 2	23 9
90 0	47 4	23 10
90 5	47 7	23 11
90 10	47 9	23 12
90 15	47 11	23 13
91 0	47 13	23 14
91 5	47 15	23 15
91 10	48 0	24 0
91 15	48 2	24 1
92 0	48 4	24 2
92 5	48 7	24 3
92 10	48 9	24 4
92 15	48 11	24 5
93 0	48 13	24 6
93 5	48 15	24 7
93 10	49 0	24 8
93 15	49 2	24 9
94 0	49 4	24 10
94 5	49 7	24 11
94 10	49 9	24 12
94 15	49 11	24 13
95 0	49 13	24 14
95 5	49 15	24 15
95 10	50 0	25 0
95 15	50 2	25 1
96 0	50 4	25 2
96 5	50 7	25 3
96 10	50 9	25 4
96 15	50 11	25 5
97 0	50 13	25 6
97 5	50 15	25 7
97 10	51 0	25 8
97 15	51 2	25 9
98 0	51 4	25 10
98 5	51 7	25 11
98 10	51 9	25 12
98 15	51 11	25 13
99 0	51 13	25 14
99 5	51 15	25 15
99 10	52 0	26 0
99 15	52 2	26 1
100 0	52 4	26 2
100 5	52 7	26 3
100 10	52 9	26 4
100 15	52 11	26 5
101 0	52 13	26 6
101 5	52 15	26 7
101 10	53 0	26 8
101 15	53 2	26 9
102 0	53 4	26 10
102 5	53 7	26 11
102 10	53 9	26 12
102 15	53 11	26 13
103 0	53 13	26 14
103 5	53 15	26 15
103 10	54 0	27 0
103 15	54 2	27 1
104 0	54 4	27 2
104 5	54 7	27 3
104 10	54 9	27 4
104 15	54 11	27 5
105 0	54 13	27 6
105 5	54 15	27 7
105 10	55 0	27 8
105 15	55 2	27 9
106 0	55 4	27 10
106 5	55 7	27 11
106 10	55 9	27 12
106 15	55 11	27 13
107 0	55 13	27 14
107 5	55 15	27 15
107 10	56 0	28 0
107 15	56 2	28 1
108 0	56 4	28 2
108 5	56 7	28 3
108 10	56 9	28 4
108 15	56 11	28 5
109 0	56 13	28 6
109 5	56 15	28 7
109 10	57 0	28 8
109 15	57 2	28 9
110 0	57 4	28 10
110 5	57 7	28 11
110 10	57 9	28 12
110 15	57 11	28 13
111 0	57 13	28 14
111 5	57 15	28 15
111 10	58 0	29 0
111 15	58 2	29 1
112 0	58 4	29 2
112 5	58 7	29 3
112 10	58 9	29 4
112 15	58 11	29 5
113 0	58 13	29 6
113 5	58 15	29 7
113 10	59 0	29 8
113 15	59 2	29 9
114 0	59 4	29 10
114 5	59 7	29 11
114 10	59 9	29 12
114 15	59 11	29 13
115 0	59 13	29 14
115 5	59 15	29 15
115 10	60 0	30 0
115 15	60 2	30 1
116 0	60 4	30 2
116 5	60 7	30 3
116 10	60 9	30 4
116 15	60 11	30 5
117 0	60 13	30 6
117 5	60 15	30 7
117 10	61 0	30 8
117 15	61 2	30 9
118 0	61 4	30 10
118 5	61 7	30 11
118 10	61 9	30 12
118 15	61 11	30 13
119 0	61 13	30 14
119 5	61 15	30 15
119 10	62 0	31 0
119 15	62 2	31 1
120 0	62 4	31 2
120 5	62 7	31 3
120 10	62 9	31 4
120 15	62 11	31 5
121 0	62 13	31 6
121 5	62 15	31 7
121 10	63 0	31 8
121 15	63 2	31 9
122 0	63 4	31 10
122 5	63 7	31 11
122 10	63 9	31 12
122 15	63 11	31 13
123 0	63 13	31 14
123 5	63 15	31 15
123 10	64 0	32 0
123 15	64 2	32 1
124 0	64 4	32 2
124 5	64 7	32 3
124 10	64 9	32 4
124 15	64 11	32 5
125 0	64 13	32 6
125 5	64 15	32 7
125 10	65 0	32 8
125 15	65 2	32 9
126 0	65 4	32 10
126 5	65 7	32 11
126 10	65 9	32 12
126 15	65 11	32 13
127 0	65 13	32 14
127 5	65 15	32 15
127 10	66 0	33 0
127 15	66 2	33 1
128 0	66 4	33 2
128 5	66 7	33 3
128 10	66 9	33 4
128 15	66 11	33 5
129 0	66 13	33 6
129 5	66 15	33 7
129 10	67 0	33 8
129 15	67 2	33 9
130 0	67 4	33 10
130 5	67 7	33 11
130 10	67 9	33 12
130 15	67 11	33 13
131 0	67 13	33 14
131 5	67 15	33 15
131 10	68 0	34 0
131 15	68 2	34 1
132 0	68 4	34 2
132 5	68 7	34 3
132 10	68 9	34 4
132 15	68 11	34 5
133 0	68 13	34 6
133 5	68 15	34 7
133 10	69 0	34 8
133 15	69 2	34 9
134 0	69 4	34 10
134 5	69 7	34 11
134 10	69 9	34 12
134 15	69 11	34 13
135 0	69 13	34 14
135 5	69 15	34 15
135 10	70 0	35 0
135 15	70 2	35 1
136 0	70 4	35 2
136 5	70 7	35 3
136 10	70 9	35 4
136 15	70 11	35 5
137 0	70 13	35 6
137 5	70 15	35 7
137 10	71 0	35 8
137 15	71 2	35 9
138 0	71 4	35 10
138 5	71 7	35 11
138 10	71 9	35 12
138 15	71 11	35 13
139 0	71 13	35 14
139 5	71 15	35 15
139 10	72 0	36 0
139 15	72 2	36 1
140 0	72 4	36 2
140 5	72 7	36 3
140 10	72 9	36 4
140 15	72 11	36 5
141 0	72 13	36 6
141 5	72 15	36 7
141 10	73 0	36 8
141 15	73 2	36 9
142 0	73 4	36 10
142 5	73 7	36 11
142 10	73 9	36 12
142 15	73 11	36 13
143 0	73 13	36 14
143 5	73 15	36 15
143 10	74 0	37 0
143 15	74 2	37 1
144 0	74 4	37 2
144 5	74 7	37 3
144 10	74 9	37 4
144 15	74 11	37 5
145 0	74 13	37 6
145 5	74 15	37 7
145 10	75 0	37 8
145 15	75 2	37 9
146 0	75 4	37 10
146 5	75 7	37 11
146 10	75 9	37 12
146 15	75 11	37 13
147 0	75 13	37 14
147 5	75 15	37 15
147 10	76 0	38 0
147 15	76 2	38 1
148 0	76 4	38 2
148 5	76 7	38 3
148 10	76 9	38 4
148 15	76 11	38 5
149 0	76 13	38 6
149 5	76 15	38 7
149 10	77 0	38 8
149 15	77 2	38 9
150 0	77 4	38 10
150 5	77 7	38 11
150 10	77 9	38 12
150 15	77 11	38 13
151 0	77 13	38 14
151 5	77 15	38 15
151 10	78 0	39 0
151 15	78 2	39 1
152 0	78 4	39 2
152 5	78 7	39 3
152 10	78 9	39 4
152 15	78 11	39 5
153 0	78 13	39 6
153 5	78 15	39 7
153 10	79 0	39 8
153 15	79 2	39 9
154 0	79 4	39 10
154 5	79 7	39 11
154 10	79 9	39 12
154 15	79 11	39 13
155 0	79 13	39 14
155 5	79 15	39 15
155 10	80 0	40 0
155 15	80 2	40 1
156 0	80 4	40 2
156 5	80 7	40 3
156 10	80 9	40 4
156 15	80 11	40 5
157 0	80 13	40 6
157 5	80 15	40 7
157 10	81 0	40 8
157 15	81 2	40 9
158 0	81 4	40 10
158 5	81 7	40 11
158 10	81 9	40 12
158 15	81 11	40 13
159 0	81 13	40 14
159 5	81 15	40 15
159 10	82 0	41 0
159 15	82 2	41 1
160 0	82 4	41 2
160 5	82 7	41 3
160 10	82 9	41 4
160 15	82 11	41 5
161 0	82 13	41 6
161 5	82 15	41 7
161 10	83 0	41 8
161 15	83 2	41 9
162 0	83 4	41 10
162 5	83 7	41 11
162 10	83 9	41 12
162 15	83 11	41 13
163 0	83 13	41 14
163 5	83 15	41 15
163 10	84 0	42 0
163 15	84 2	42 1
164 0	84 4	42 2
164 5	84 7	42 3
164 10	84 9	42 4
164 15	84 11	42 5
165 0	84 13	42 6
165 5	84 15	42 7
165 10	85 0	42 8
165 15	85 2	42 9
166 0	85 4	42 10
166 5	85 7	42 11
166 10	85 9	42 12
166 15	85 11	42 13
167 0	85 13	42 14
167 5	85 15	42 15
167 10	86 0	43 0
167 15	86 2	43 1
168 0	86 4	43 2
168 5	86 7	43 3
168 10	86 9	43 4
168 15	86 11	43 5
169 0	86 13	43 6
169 5	86 15	43 7
169 10	87 0	43 8
169 15	87 2	43 9
170 0	87 4	43 10
170 5	87 7	43 11
170 10	87 9	43 12
170 15	87 11	43 13
171 0	87 13	43 14
171 5	87 15	43 15
171 10	88 0	44 0
171 15	88 2	44 1
172 0	88 4	44 2
172 5	88 7	44 3
172 10	88 9	44 4
172 15	88 11	44 5
173 0	88 13	44 6
173 5	88 15	44 7
173 10	89 0	44 8
173 15	89 2	44 9
174 0	89 4	44 10
174 5	89 7	44 11
174 10	89 9	44 12
174 15	89 11	44 13
175 0	89 13	44 14
175 5	89 15	44 15
175 10	90 0	45 0
175 15	90 2	45 1
176 0	90 4	45 2
176 5	90 7	45 3
176 10	90 9	45 4
176 15	90 11	45 5
177 0	90 13	45 6
177 5	90 15	45 7
177 10	91 0	45 8
177 15	91 2	45 9
178 0	91 4	45 10
178 5	91 7	45 11
178 10	91 9	45 12
178 15	91 11	45 13
179 0	91 13	45 14
179 5	91 15	45 15
179 10	92 0	46 0
179 15	92 2	46 1
180 0	92 4	46 2
180 5	92 7	46 3
180 10	92 9	46 4
180 15	92 11	46 5
181 0	92 13	46 6
181 5	92 15	46 7
181 10	93 0	46 8
181 15	93 2	46 9
182 0	93 4	46 10
182 5	93 7	46 11
182 10	93 9	46 12
182 15	93 11	46 13
183 0	93 13	46 14
183 5	93 15	46 15
183 10	94 0	47 0
183 15	94 2	47 1
184 0	94 4	47 2
184 5	94 7	47 3
184 10	94 9	47 4
184 15	94 11	47 5
185 0	94 13	47 6
185 5	94 15	47 7
185 10	95 0	47 8
185 15	95 2	47 9
186 0	95 4	47 10
186 5	95 7	47 11
186 10	95 9	47 12
186 15	95 11	47 13
187 0	95 13	47 14
187 5	95 15	47 15
187 10	96 0	48 0
187 15	96 2	48 1
188 0	96 4	48 2
188 5	96 7	48 3
188 10	96 9	48 4
188 15	96 11	48 5
189 0	96 13	48 6
189 5	96 15	48 7
189 10	97 0	48 8
189 15	97 2	48 9
190 0	97 4	48 10
190 5	97 7	48 11
190 10	97 9	48 12
190 15	97 11	48 13
191 0	97 13	48 14
191 5	97 15	48 15
191 10	98 0	49 0
191 15	98 2	49 1
192 0	98 4	49 2
192 5	98 7	49 3
192 10	98 9	49 4
192 15	98 11	49 5
193 0	98 13	49 6
193 5	98 15	49 7
193 10	99 0	49 8
193 15	99 2	49 9
194 0	99 4	49 10
194 5	99 7	49 11
194 10	99 9	49 12
194 15	99 11	49 13
195 0	99 13	49 14
195 5	99 15	49 15
195 10	100 0	50 0
195 15	100 2	50 1
196 0	100 4	50 2
196 5	100 7	50 3
196 10	100 9	50 4
196 15	100 11	50 5
197 0	100 13	50 6
197 5	100 15	50 7
197 10	101 0	50 8
197 15	101 2	50 9
198 0	101 4	50 10
198 5	101 7	50 11
198 10	101 9	50 12
198 15	101 11	50 13
199 0	101 13	50 14
199 5	101 15	50 15
199 10	102 0	51 0

SUPPORTING DATA TO ACCOMPANY CLAIMS ON FORM 1116 (OR 1118) WITH RESPECT TO CREDIT FOR BRITISH INCOME TAX PAID DURING THE YEAR 1931 ON DIVIDENDS BY BRITISH-AMERICAN TOBACCO COMPANY, LIMITED, FOR AND ON BEHALF OF ITS STOCKHOLDERS.

Great Britain & Ireland.
London, England.
Consulate General of the United States of America } S.S:

I, JOHN F. CLAFFEY, Vice-Consul of the United States of America residing at London, England do hereby make known and certify to all whom it may concern that H. PETER VENN, who hath signed the annexed Certificate, is a Notary Public duly admitted and sworn and practising in the city of LONDON :: ENGLAND and that to all acts by him so done full faith and credit are and ought to be given in Judicature and thereout.

(Seal of American Consulate General London England)

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my seal of Office at London aforesaid, this 9th day of January in the year of our Lord One Thousand Nine Hundred and Thirty-two.

(Signed) John F. Claffey
Vice Consul of the United States of America at London, England.

Service No. 267
No fee prescribed

UNITED KINGDOM OF GREAT BRITAIN
CITY & COUNTY OF LONDON, ENGLAND } SS.

BE IT KNOWN that on this eighth day of January One thousand nine hundred and thirty-two, before me the undersigned HARRY PETER VENN, of the City of London, Notary Public, duly admitted and sworn, practising in the said City, personally came and appeared HERBERT JOHN TOWLE, to me known and known to me to be the Individual who signed the hereunto annexed Instrument, marked with the letter "A", and acknowledged to me that he is His Majesty's Inspector of Taxes, of No. 59, Palace Street, Westminster, in the County of London, England, and that he signed the said Instrument in his said capacity for the uses and purposes therein expressed.

(Cancelled 1 shilling British Stamp)

AND THAT on the same day before me personally came and appeared the Honourable FREDERIC FERGUS MACNAGHTEN, HARRY HERBERT NEALE and EDGAR AUTHUR BLOCKLEY, to me known, who acknowledged to me that they are two of the Directors and the Assistant Secretary respectively of BRITISH-AMERICAN TOBACCO COMPANY LIMd, the Company which executed the also hereunto annexed Instrument, marked with the letter "B", that they know the Common Seal of the said Company; that the Seal affixed to the said Instrument is such Common Seal; that it was so affixed by order of the Board of Directors of the said Company and that they signed their names thereto by like order.

IN WITNESS WHEREOF I have hereunto set my hand and affixed my Seal of Office at London aforesaid the day and year first above written.

(Signed) H. Peter Venn
Not: Pub:
London.

(Notary Seal)

"A"

INLAND REVENUE.

H. M. INSPECTOR OF TAXES,
WESTMINSTER 1st DISTRICT,
59, Palace Street, S. W. 1.
8th January, 1932.

The Secretary,
British-American Tobacco Co. Ltd.,
Westminster House,
7, Millbank,
S. W. 1.

I hereby certify that the British-American Tobacco Co. Ltd., has on behalf of its shareholders been assessed to and has paid or will pay British Income Tax and Income Tax in the Dominions of the British Empire in respect of the whole of its profits for the years ending 5th April, 1931 and 1932 at the rate of 4/6d and 5/- in the £. respectively, and that Income Tax at this rate has accordingly been borne or will be borne by the Company on behalf of its shareholders on the dividends paid during the year ended 31st December, 1931. Where dividends are paid "free of tax" such dividends are regarded as equivalent to a net dividend from which Income Tax has been withheld.

The Company furnishes to its shareholders printed Certificates showing the amount of the dividend and the rate of Income Tax taken into account in arriving at such dividend and these certificates are accepted by the Inland Revenue Department as evidence for the purpose of any claims preferred by individual shareholders for repayment of Income Tax.

(Signed) H. J. Towle
H. M. Inspector of Taxes.

"B"

WE HEREBY CERTIFY that dividends were paid during the year ended the thirty-first day of December One thousand nine hundred and thirty-one on the ORDINARY SHARES OR STOCK of BRITISH-AMERICAN TOBACCO COMPANY LIMITED as follows:-

19th January	1931	Final to 30th September 1930	1/8d.	per £1 share.
19th January	1931	Interim for the year to 30th September 1931	10d.	" "
31st March	1931	—do—	10d.	" £1 of stock.
30th June	1931	—do—	10d.	" "
30th September	1931	—do—	10d.	" "

all of which were paid free of United Kingdom and Dominion Income Tax and that Income Tax has been withheld in respect of the dividends paid on the nineteenth January One thousand nine hundred and thirty-one and the thirty-first March One thousand nine hundred and thirty-one at the rate of four shillings and sixpence in the pound and in respect of the dividends paid on the thirtieth June One thousand nine hundred and thirty-one and on the thirtieth September One thousand nine hundred and thirty-one at the rate of five shillings in the pound.

WE FURTHER CERTIFY that dividends at the rate of five per centum per annum were paid on the 5% PREFERENCE STOCK of the Company as follows:-

31st March 1931	Half year to date.
30th September 1931	Half year to date

and that Income Tax at the rate of four shillings and one penny in the pound (being United Kingdom Income Tax at four shillings and sixpence in the pound less fivepence in the pound relief in respect of Dominion Income Tax) has been paid in respect of the dividend paid on the thirty-first day of March One thousand nine hundred and thirty-one and at four shillings and seven pence in the pound (being United Kingdom Income Tax at five shillings in the pound less fivepence in the pound relief in respect of Dominion Income Tax) from that paid the thirtieth day of September One thousand nine hundred and thirty-one.

WE FURTHER CERTIFY that dividends at the rate of six per centum per annum were paid on the SIX PER CENT CUMULATIVE SECOND PREFERENCE STOCK of the Company as follows:-

30th April 1931	Half year to date.
31st October 1931	Half year to date

and that Income Tax at the rate of four shillings and seven-pence in the pound (being United Kingdom Income Tax at five shillings in the pound less five-pence in the pound relief in respect of Dominion Income Tax) has been paid in respect of these dividends.

LONDON the eighth day of January One thousand nine hundred and thirty-two.

THE COMMON SEAL OF BRITISH-AMERICAN TOBACCO COMPANY LIMITED was hereunto affixed in the presence of:- } (Common Seal of British-American Tobacco Company Limited)

(Signed) Fred F. Macnaghten
(Signed) H. H. Neale } Directors.

(Signed) E. A. Blockley Assistant Secretary.

Note.—The original of this Certificate, acknowledged and authenticated as shown, filed March 14, 1932, with the Collector of Internal Revenue for the 14th District of New York, at Albany, N. Y., as supporting document, for claim for credit of foreign taxes on Form 1116 filed by George Garland Allen, which, under arrangements made with Internal Revenue Department at Washington, makes it permissible for other stockholders of British-American Tobacco Company, Limited, to use copy in connection with their respective claims for credit.

SUPPORTING DATA TO ACCOMPANY CLAIMS ON FORM 1116 (OR 1118) WITH RESPECT TO CREDIT FOR BRITISH INCOME TAX PAID DURING THE YEAR 1931 ON DIVIDENDS BY TOBACCO SECURITIES TRUST COMPANY LIMITED, FOR AND ON BEHALF OF ITS STOCKHOLDERS.

Great Britain & Ireland.
London, England.
Consulate General of the United States of America } S.S:

I, JOHN F. CLAFFEY, Vice-Consul of the United States of America residing at London, England do hereby make known and certify to all whom it may concern that H. PETER VENN, who hath signed the annexed Certificate, is a Notary Public duly admitted and sworn and practising in the city of LONDON:: ENGLAND and that to all acts by him so done full faith and credit are and ought to be given in Judicature and thereout.

(Seal of American Consulate General London, England)

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my seal of Office at London aforesaid, this 9th day of January in the year of our Lord One Thousand Nine Hundred and Thirty-two.

(Signed) John F. Claffey
Vice Consul of the United States of America at London, England.

Service No. 186
No fee prescribed

UNITED KINGDOM OF GREAT BRITAIN
CITY & COUNTY OF LONDON, ENGLAND } SS.

BE IT KNOWN that on this eighth day of January One thousand nine hundred and thirty-two, before me the undersigned HARRY PETER VENN, of the City of London, Notary Public, duly admitted and sworn, practising in the said City, personally came and appeared HERBERT JOHN TOWLE, to me known and known to me to be the Individual who signed the hereunto annexed Instrument, marked with the letter "A", and acknowledged to me that he is His Majesty's Inspector of Taxes, of No. 59, Palace Street, Westminster, in the County of London, England, and that he signed the said Instrument in his said capacity for the uses and purposes therein expressed.

(Cancelled 1 Shilling British Stamp)

AND THAT on the same day before me personally came and appeared the Honourable FREDERIC FERGUS MACNAGHTEN, ALBERT EDWARD ALDRIDGE and EDGAR AUTHUR BLOCKLEY, to me known, who acknowledged to me that they are two of the Directors and the Secretary respectively of TOBACCO SECURITIES TRUST COMPANY LIMITED, the Company which executed the also hereunto annexed Instrument, marked with the letter "B", that they know the Common Seal of the said Company; that the Seal affixed to the said Instrument is such Common Seal; that it was so affixed by order of the Board of Directors of the said Company and that they signed their names thereto by like order.

IN WITNESS WHEREOF I have hereunto set my hand and affixed my Seal of Office at London aforesaid the day and year first above written.

(Signed) H. PETER VENN
Not: Pub:
London.

(Notary Seal)

"A"

INLAND REVENUE.

H. M. INSPECTOR OF TAXES,
WESTMINSTER 1st DISTRICT,
59, Palace Street, S. W. 1.
8th January, 1932.

To The Secretary,
Tobacco Securities Trust Co. Ltd.,
Westminster House,
7, Millbank,
S. W. 1.

I hereby certify that the Tobacco Securities Trust Co. Ltd., has on behalf of its shareholders been assessed to and has paid or will pay British Income Tax and Income Tax in the Dominions of the British Empire, in respect of the whole of its profits for the years ending 5th April, 1931 and 1932 at the rate of 4/6d and 5/- in the £., respectively, and that Income Tax at this rate has accordingly been borne or will be borne by the Company on behalf of its shareholders on the dividends paid during the year ended 31st December, 1931.

The Company furnishes to its shareholders printed Certificates shewing the amount of the dividend and the rate of Income Tax applying to such dividends and these Certificates are accepted by the Inland Revenue Department as evidence for the purpose of any claims preferred by individual shareholders for repayment of Income Tax.

(Signed) H. J. Towle
H. M. Inspector of Taxes.

"B"

WE HEREBY CERTIFY that dividends were paid during the year ended the thirty-first day of December one thousand nine hundred and thirty-one on the ORDINARY STOCK and SHARES of TOBACCO SECURITIES TRUST COMPANY LIMITED as follows:-

15th May 1931 Interim for year to 31st October 1931 ..... Five per centum.
10th December 1931 Final for year to 31st October 1931 ..... Twelve and a half per centum.

and that United Kingdom and Dominion Income Tax has been paid in respect of such dividends at the rate of five shillings in the pound.

WE FURTHER CERTIFY that a first and final Dividend at the rate of 6.857d. for each Five shillings of DEFERRED STOCK and SHARES was paid on the tenth day of December one thousand nine hundred and thirty-one and that United Kingdom and Dominion Income Tax has been paid in respect of such dividend at the rate of five shillings in the pound.

LONDON the eighth day of January one thousand nine hundred and thirty-two.

THE COMMON SEAL OF TOBACCO SECURITIES TRUST COMPANY LIMITED was hereunto affixed in the presence of:-

(Common Seal of Tobacco Securities Trust Company Limited)

(Signed) Fred F. Macnaghten
(Signed) A. E. Aldridge } Directors.

(Signed) E. A. Blockley Secretary.

Note.—The original of this Certificate, acknowledged and authenticated as shown, filed March 14, 1932, with the Collector of Internal Revenue for the 14th District of New York, at Albany, N. Y., as supporting document for claim for credit of foreign taxes on Form 1116 filed by George Garland Allen, which under arrangements made with Internal Revenue Department at Washington, makes it permissible for other stockholders of Tobacco Securities Trust Company, Limited, to use copy in connection with their respective claims for credit.

EXHIBIT "E".

91

EXHIBIT "I". 53

The IMPERIAL TOBACCO COMPANY 43
(OF GREAT BRITAIN AND IRELAND), LIMITED.

No. 59179

BRISTOL,

28th February, 1931.

To George W. Elkins Jnr. Esq.,
Jenkinstown

DEAR SIR OR MADAM,

I attach Warrant for £ 1567 : 10 : – being a final Dividend of 9 per cent. (making 16 per cent. for the year), together with a Bonus of 1s. 6d. per Share (both free of Income Tax @ *4s. 5d. in the £), for the year ended 31st October, 1930, on the 9500 Ordinary Shares held by you.

For the gross amount of the Dividend and Bonus and the amount of Income Tax thereon, see attached table.

I certify that Income Tax on the profits of the Company of which this dividend forms a part has been or will be paid by the Company to the proper Officer for the receipt of Taxes.

Yours faithfully,

R. J. SINCLAIR,

Secretary.

*The rate of British Income Tax applying to the Dividends for the year ended 31st October, 1930, has been finally settled at 4s. 5d. in the £ (4/8 less 1d. relief in respect of Dominion Income Tax, which has been or will be allowed to the Company under Section 27 of the Finance Act, 1920).

NOTE—This part to be retained by the Shareholder.

Attachment 2nd page

EXHIBIT "I" 3d page

EXHIBIT "I" 4th page

Income Tax at 4s. 6d. in the £	Gross Amount of Final Dividend and Bonus	No. of Shares

EXHIBIT "J". 61

The IMPERIAL TOBACCO COMPANY 44
(OF GREAT BRITAIN AND IRELAND), LIMITED.

No. 51958

BRISTOL,

To George W Ekins Esq 31st August, 1931.

Carnatown

DEAR SIR OR MADAM,

I attach Warrant for £ 665 : – : being an interim Dividend of 7 per cent. (free of Income Tax @ *4s. 5d. in the £) on the 9500 Ordinary Shares held by you in respect of the year ending 31st October, 1931.

For the gross amount of the Dividend and the amount of Income Tax thereon, see attached table.

I certify that Income Tax has been or will be paid by the Company to the proper Officer for the receipt of Taxes.

Yours faithfully,

R. J. SINCLAIR,

Secretary.

*The rate of British Income Tax at present applying to this Dividend is 4s. 5d. in the £ (4/6 less 1d. relief in respect of Dominion Income Tax, which has been or will be allowed to the Company under Section 27 of the Finance Act, 1930).

NOTE—This part to be retained by the Shareholder.

No. of Returns	Gross Amount of Interest Received	Income Tax at 6a, 6d. in the £

Continued on next page

To all to whom these Presents shall come I FREDERICK JOHN PRESS of the City of Bristol in England Notary Public by Royal Authority duly admitted and sworn Do HEREBY CERTIFY AND ATTEST that the hereunto annexed Certificate was this day signed in my presence by Francis Marshall Miller His Majesty's Inspector of Taxes for the District of the City and County of Bristol, England.

WHEREOF an Act being required I the said Notary have granted these presents under my Notarial Seal to serve and avail when and where need may require.

DONE AND PASSED in Bristol the 7th day of March 1932.

F. J. PRESS,
Notary Public,
Bristol, England.

(Revenue Stamp 1 s.)

[NOTARIAL SEAL]

Kingdom of Great Britain and Ireland, City and County of Bristol, in England, Consulate of the United States of America. } ss.

I, WILLIAM C. YOUNG, Vice Consul of the United States of America at Bristol, England, do hereby certify and make known to whom it may concern that FREDERICK JOHN PRESS, who hath signed the annexed instrument and hath affixed his official seal thereto is a NOTARY PUBLIC practising at BRISTOL, in the County of Bristol, in England, duly authorized, admitted and sworn; that his signature to the annexed instrument is, to the best of my knowledge and belief, true and genuine, and that to all acts by him so done full faith and credit are and should be given in Judicature.

IN TESTIMONY WHEREOF I have hereunto set my hand and affixed the Seal of the Consulate of the United States of America at Bristol, England, this eighth day of March, in the year of our Lord, 1932.

WILLIAM C. YOUNG,
Vice Consul of the United States of Americd at Bristol, England.

[Seal of American Consulate, Bristol, England]

Miscellaneous Service No. 121.
Tariff No. 38.
Fee $2.00 equivalent to 11s/8d.

(Fee Stamp)
Bristol, England.
Mar. 9, 1932.

(The originals of these certificates were filed on April 9, 1932, with the Collector of Internal Revenue, Philadelphia, Pa., as supporting documents to the claim of Commonwealth Improvement Company, a corporation organized and existing under the laws of the State of Pennsylvania and a stockholder of The Imperial Tobacco Company of Great Britain and Ireland, Ltd.)

E33

70

The Secretary,

The Imperial Tobacco Company (of Great Britain and Ireland), Limited,
Bedminster,
Bristol.

I HEREBY CERTIFY that The Imperial Tobacco Company (of Great Britain and Ireland), Limited has been assessed to and has paid Income Tax in respect of the whole of its profits for the year ended 5th April 1932 at the rate of 4/10.912289 in the £ and that Income Tax has been withheld by the Company from the dividends paid out of its profits during the year ended 31st December 1931.

The Company furnishes to its Shareholders printed Certificates showing the amount of the dividend and the rate of Income Tax taken into account in arriving at such dividend.

These Certificates are accepted by the Inland Revenue Department as evidence for the purpose of any claim preferred by the individual Shareholder for repayment of Income Tax.

DATED this 7th day of March 1932.

F. M. MILLER,
H. M. Inspector of Taxes.

I, FREDERICK JOHN PRESS, of the City of Bristol in England Notary Public duly admitted and sworn practising in the said City Do HEREBY CERTIFY AND ATTEST that on the day of the date hereof the Common Seal of The Imperial Tobacco Company (of Great Britain and Ireland) Limited was affixed at the foot of the hereunto annexed document (in pursuance of a Resolution of the Board of Directors of the said Company) in my presence and in that of George Adolph Falk and William Rennie two of the Directors of the said Company and Alexander Balfour Scott Assistant Secretary thereof who signed in my presence at the foot of the said document as witnessing the affixing of the said seal.

Whereof an Act being required I the said Notary have granted these presents under my Notarial Firm and Seal to serve and avail when and where need may require.

DONE AND PASSED in Bristol the 25th day of February in the year of our Lord 1932.

F. J. PRESS, (Revenue Stamp 1 s.)
Notary Public,
Bristol, England.

(NOTARIAL SEAL)

Kingdom of Great Britain and Ireland, City and County of Bristol in England, Consulate of the United States of America. } ss.

I, WILLIAM C. YOUNG, Vice Consul of the United States of America at Bristol, England, do hereby certify and make known to whom it may concern that FREDERICK JOHN PRESS, who hath signed the annexed instrument and hath affixed his official seal thereto is a NOTARY PUBLIC practising at Bristol, in the County of Bristol, in England, duly authorized, admitted and sworn; that his signature to the annexed instrument is, to the best of my knowledge and belief, true and genuine, and that to all acts by him so done full faith and credit are and should be given in Judicature.

IN TESTIMONY WHEREOF I have hereunto set my hand and affixed the Seal of the Consulate of the United States of America at Bristol, England this 25th day of February, in the year of our Lord, 1932.

WILLIAM C. YOUNG
Vice Consul of the United States of America at Bristol, England.

[Seal of American Consulate Bristol, England]

Miscellaneous Service No. 87.
Tariff No. 38.
Fee $2.00 equivalent to 12s/0d.

(Fee Stamp)
Bristol, England.
Feb. 25, 1932.

72

THE IMPERIAL TOBACCO COMPANY
(of Great Britain and Ireland) Limited.

We Hereby Certify that since the 31st December, 1930 dividends were paid on the Ordinary Shares of The Imperial Tobacco Company (of Great Britain and Ireland), Limited as follows:—

Date of Payment	Particulars of Dividend	Rate of Income Tax
		s. d.
2nd March 1931.....	Final for the year ended 31st October 1930 at 9% free of tax.	4. 5.
2nd March 1931.....	Bonus for the year ended 31st October 1930 at 1/6 per share free of tax.....	4. 5.
1st September 1931..	Interim on account of the year ended 31st October 1931 at 7% free of tax.....	4.11.

all of which were paid free of British Income Tax and that Income Tax has been withheld by the Company from the dividends paid at the rate of tax shown above respectively.

Dated this 25th day of February, 1932.

R. M. E. R.

The Common Seal of The Imperial Tobacco Company (of Great Britain and Ireland) Limited was hereunto affixed in the presence of:

George A. Falk, Director.

W. Rennie, Director.

A. B. Scott, Assistant Secretary.

(Seal of The Imperial Tobacco Company (of Great Britain and Ireland) Limited.)

E36

EXHIBIT "L". 73

TO

George W.Elkins,Junr.Esq.,
419 York Road, Jenkintown,
Pennsylvania, U.S.A.

SUR-TAX, 1930-31.

NOTICE OF ASSESSMENT UNDER THE INCOME TAX ACTS BY THE SPECIAL COMMISSIONERS.

The Special Commissioners of Income Tax have made an Assessment on you to Sur-tax for the year ending 5th April, 1931, as follows:—

Number of Assessment.	Amount of Assessment.	Sur-tax charged.		
524683	£ 6592	£ 659.	s. 12.	d. 3

If you intend to appeal against the Assessment, you must give Notice to me in writing and state the grounds of your appeal **within twenty-eight days from the date hereof.** All correspondence should contain a reference to the Assessment Number quoted above.

The whole of the tax is payable on or before the 1st January, 1932 (except as regards Assessments signed and allowed by the Commissioners on or after that date, in which case the tax is payable on the day following that on which the Assessment was signed and allowed).

The tax should be paid without further application from this Office, on or before the date on which it is payable, to the **Accountant-General (Cashier), Inland Revenue, Somerset House, London, W.C.2. Payment should not be made to the Special Commissioners.**

Dated this 23 OCT 1931 day of 193 .

A.A. Shuts

YORK HOUSE, 23, KINGSWAY, LONDON, W.C.2. *Clerk to the Special Commissioners.*

The rates of tax are set out on the other side.

E37

EXHIBIT "L" 2nd page

Sur-tax for the year 1930-31 is chargeable in respect of incomes which exceed £2,000 at the following rates:—

In respect of—			Example:— Income. £	Sur-tax. £ s. d.
The first	£2,000 of the income	Nil.	2,000	Nil.
.. next	£500 of the income up to	£2,500 at 1s. 0d. in the £ plus ten per cent.	2,500	27 10 0
.. ..	£500	£3,000 at 1s. 3d.	3,000	61 17 6
.. ..	£1,000	£4,000 at 2s. 0d.	4,000	171 17 6
.. ..	£1,000	£5,000 at 3s. 0d.	5,000	336 17 6
.. ..	£1,000	£6,000 at 3s. 6d.	6,000	529 7 6
.. ..	£2,000	£8,000 at 4s. 0d.	8,000	989 7 6
.. ..	£2,000	£10,000 at 5s. 0d.	10,000	1,519 7 6
.. ..	£5,000	£15,000 at 5s. 6d.	15,000	3,031 17 6
.. ..	£5,000	£20,000 at 6s. 0d.	20,000	4,681 17 6
.. ..	£10,000	£30,000 at 6s. 6d.	30,000	8,256 17 6
.. ..	£20,000	£50,000 at 7s. 0d.	50,000	15,056 17 6
The remainder of the income at 7s. 6d. in the £ plus ten per cent.			Exceeding £50,000	15,056 17 6 plus 8s. 3d. in each £ of the excess over £50,000

ESTIMATED NATIONAL EXPENDITURE IN 1931.

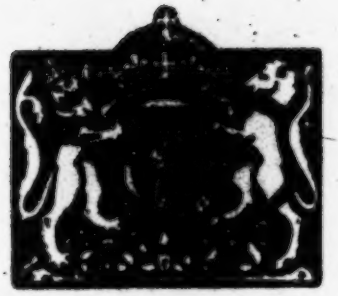
1.	GRANT SERVICES:—		
	For Local Services in Great Britain, including		
	Exchequer Contributions to Local Revenues	46,246,000	
	Education (including Teachers' Pensions)	56,767,000	
	Housing	14,543,000	
	Police	11,950,000	
	Agriculture	5,428,000	
	Health Services	188,000	
	Unemployment Grants and Loans	3,585,000	
	Miscellaneous	886,000	
	For Irish Services	9,743,000	£149,339,000
2.	NATIONALLY ADMINISTERED SERVICES:—		
	Debt Interest and Management	302,950,000	
	War Pensions	50,396,000	
	Old Age Pensions	38,197,000	
	Grants to Health Insurance, Unemployment Insurance and Widows, etc., Contributory Pensions Schemes	61,599,000	
	Defence Services	111,412,000	
	Tax Collection	11,516,000	
	All other Services	25,907,000	£601,977,000
	TOTAL ORDINARY EXPENDITURE ..		£751,316,000*
3.	NATIONAL DEBT SINKING FUND		£52,050,000†
4.	SELF SUPPORTING SERVICES:—		
	Post Office	58,232,000	
	Road Fund	23,350,000	£81,582,000

* Under the Supplementary Budget, 1931-32, this figure must be increased by £813,000 Supplementary Estimates and by £34,000,000 in respect of the cessation of borrowing for the Unemployment Insurance Fund and Road Fund. It is reduced by £13,590,000 debt interest under the Hoover plan and by £22,000,000 economies (which will be £70,000,000 in a full year). The final figure is £750,579,000.

† Under the Supplementary Budget, 1931-32, proposed to be approximately £32,500,000.

E 38

A. & C.G. 529 D.



INLAND REVENUE,
SOMERSET HOUSE,
LONDON, W.C.2.

No. 79688

14.12.31.

The Accountant & Comptroller General begs to acknowledge the receipt of the undermentioned remittance in respect of Sur-tax:—

YEAR OF ASST.	ASST. No.	£	s.	d.
1930/31	524683	659	12	3

pro Cashier.

(847) Wt.15783 9040 10/30 140,000 J.C.&S.Ltd. Gp.107/3.

INDIVIDUAL INCOME TAX RETURN

FOR NET INCOMES FROM SALARIES OR WAGES OF MORE THAN $5,000
AND INCOMES FROM BUSINESS, PROFESSIONS, RENTS, OR SALE OF PROPERTY

For Calendar Year 1931

File This Return With the Collector of Internal Revenue for Your District on or Before March 15, 1932

PRINT NAME AND ADDRESS CLEARLY BELOW

GEORGE W. ELKINS
(Name)

419 YORK ROAD
(Street and number, or rural route)

JENKINTOWN (Post office) MONTGOMERY (County) PENNA. (State)

Do Not Write in These Spaces

No. 434

Serial No. 302239

Tax 1931 82.10
Penalty
Interest 9.71
Total 91.81
Paid Co
Date CK 3/22/33
Audited by B
Unit No. Coll. Dist. 1/2/33
LIST
Completion

RECEIVED PAYMENT BY CHECK
[illegible] 1932
U. S. COLLECTOR
[illegible]

1. Are you a citizen or resident of the United States? YES
2. If you filed a return for 1930, to what Collector's office was it sent? PHILADELPHIA, PA.
3. Is this a joint return of husband and wife? NO
4. State name of husband or wife if a separate return was made and the Collector's office where it was filed. [illegible] CLAIMS PHILADELPHIA, PA.
5. Were you married and living with husband or wife on the last day of your taxable year? YES
6. If not, were you on the last day of your taxable year separated in your household one or more persons of whom you claimed to you?
7. If your answer is respect to questions 5 and 6 changed during the year, state date and nature of change
8. How many dependent persons other than husband or wife under 18 years of age or incapable of self-support were receiving their chief support from you on the last day of your taxable year? TWO (2)

	INCOME	Amount received	Deduction		
1.	Salaries, Wages, Commissions, etc. (Name and address of employer) Director's Fees				
	Real Estate Title & Tr. Co., Phila., Pa.	$ 140.00	$ 0.00		140 00
	[illegible] Co., Jenkintown, Pa.	40.00	0.00		20 00
	Atlantic Elevator Company, Philadelphia, Pa.	20.00	0.00		20 00
2.	Income from Business or Profession. (From Schedule A)				0 00
3.	Interest on Bank Deposits, Notes, Corporation Bonds, etc. (except Interest on tax-free covenant bonds)			9	565 44
4.	Interest on Tax-free Covenant Bonds Upon Which No Tax Is to be Paid at Source				575 00
5.	Income from Partnerships. (Name partnership)				0 00
					0 00
6.	Income from Fiduciaries. (Name estate and trust) Estate of William L. Elkins,				
	1420 Land Title Bldg., Philadelphia, Pa.			10	306 05
7.	Rents and Royalties. (From Schedule B)			5	859 41
8.	Profit from Sale of Real Estate, Stocks, Bonds, etc. (From Schedule C)				9 15
9.	Taxable Interest on Liberty Bonds, etc. (From Schedule E)				685 60
10.	Dividends on Stock of Domestic Corporations			256	251 72
11.	Other Income (including dividends on stock of foreign corporations). (State nature of income)				
	(a) Dividends on stock of Foreign Corporations			31	010 85
	(b) Interest on Foreign Bonds, etc.				766 71
12.	TOTAL INCOME IN ITEMS 1 TO 11				$ 301 537 32
	DEDUCTIONS				
13.	Interest Paid			$ 8	431 68
14.	Taxes Paid. (Explain in Schedule F)			19	455 76
15.	Losses by Fire, Storm, etc. (Explain in Table at foot of page 2)				0 00
16.	Bad Debts. (Explain in Schedule F)			12	000 00
17.	Contributions. (Explain in Schedule F)			37	613 40
18.	Other Deductions Authorized by Law. (Explain in Schedule F)			12	327 57
19.	TOTAL DEDUCTIONS IN ITEMS 13 TO 18				$ 89 869 41
20.	NET INCOME (Item 12 minus Item 19)				$ 211 667 91

EARNED INCOME CREDIT

21.	Earned Income (not over $20,000)	$ 6,000	00
22.	Less Personal Exemption and Credit for Dependents	800	00
23.	Balance (Item 21 minus 22)	$ 5,200	00
24.	Amount taxable at 1½% (not over $4,000)	$ 4,000	00
25.	Amount taxable at 3% (not over $4,000)	200	00
26.	Amount taxable at 5% (balance over $8,000 of Item 23)	0	00
27.	Normal Tax (1½% of Item 24)	$ 60	00
28.	Normal Tax (3% of Item 25)	6	00
29.	Normal Tax (5% of Item 26)	0	00
30.	Surtax on Item 21	0	00
31.	Tax on Earned Net Income (total of Items 27 to 30)	$ 66	00
32.	Credit of 25% of Tax (not over 25% of Items 27, 44, 46, and 48)	$ 16	50

COMPUTATION OF TAX (See Instruction 29)

33.	Net Income (Item 20 above)		$ 211667	91
34.	Less: Liberty Bond Interest (Item 9)	$ 835 50		
35.	Dividends (Item 10)	255251 72		
36.	Credit for Dependents	800 00		
37.	Personal Exemption	0 00		
38.	Total of Items 34 to 37		256887	22
39.	Balance (Item 33 minus 38)		$ 0	00
40.	Amount taxable at 1½% (not over $4,000)		0	00
41.	Balance (Item 39 minus 40)		$ 0	00
42.	Amount taxable at 3% (not over $4,000)		0	00
43.	Amount taxable at 5% (Item 41 minus 42)		$ 0	00
44.	Normal Tax (1½% of Item 40)		$ 0	00
45.	Normal Tax (3% of Item 42)		0	00
46.	Normal Tax (5% of Item 43)		0	00
47.	Surtax on Item 33 (see Instruction 29)		55,989	88
48.	Tax on Net Income (total of Items 44 to 47)		$ 55,989	88
49.	Tax on Capital Gain or Loss (12½% of Col. 3, Sched. D)		186	66
50.	Total of Items [illegible]		$ 54,176	54
51.	Less Credit of [illegible] of Tax on Earned Income		16	50
52.	Total Tax (Item [illegible])		$ 54,160	04
53.	Less [illegible]		486	05
54.	Income [illegible]		5,044	99
55.	Balance [illegible]		$ 49,669	00

AFFIDAVIT

I swear (or affirm) that this return, including the accompanying schedules and statements, has been examined by me, and to the best of my knowledge and belief, is a true and complete return made in good faith for the taxable year stated, pursuant to the Revenue Act of 1928, and that I have attached thereto all [illegible] received during such taxable year.

See Instruction 27

If return is made by agent, the agent's character must be stated on this line.

Sworn to and subscribed before me this 12th day of March, 1932.

George W. Elkins
(Signature of individual or agent)

NOTARIAL SEAL

H. Chasan [illegible]
(Signature of officer administering oath) (Title)

(Address of agent)

An amended return must be marked "Amended" at top of return. Checks and drafts will be accepted only if payable at par

SCHEDULE A—INCOME FROM BUSINESS OR PROFESSION (See Instruction 2)

1. Total receipts from business or profession (state kind of business) ____ $ ____

Cost or Gross Sales			Other Business Deductions		
2. Labor	$		10. Salaries not included as "Labor," in Line 2. (Do not deduct compensation for your services)	$	
3. Material and supplies			11. Interest on business indebtedness to others		
4. Merchandise bought for sale			12. Taxes on business and business property		
5. Other costs (Itemize below or on separate sheet)			13. Losses (explain in table at foot of page)		
6. Final inventory at beginning of year			14. Bad debts arising from sales or services		
7. Total (Lines 2 to 6)	$		15. Depreciation, obsolescence, and depletion (explain in table provided at foot of page)		
8. Less inventory at end of year			16. Rent, repairs, and other expenses (Itemized below or on separate sheet)		
9. Net Cost of Goods Sold (Line 7 minus Line 8)	$		17. Total (Lines 10 to 16)	$	
Enter "C," or "C or M," on Lines 8 and 9 to indicate whether inventories are valued at cost, or cost or market, whichever is lower.			18. Total Deductions (Line 9 plus Line 17)		$
			19. Net Profit (Line 1 minus Line 18) (Enter as Item 2)		$

Explanation of deductions claimed on Lines 5 and 16 ____

SCHEDULE B—INCOME FROM RENTS AND ROYALTIES (See Instruction 7)

1. Kind of Property	2. Amount Received	3. Cost or Value as of March 1, 1913, (Explain in table at foot of page)	4. Depreciation (Explain in table at foot of page)	5. Expenses	6. Gross Revenue (Itemize below)	7. Net Profit (Enter as Item 7)
Dwellings, Apartments, Stores and Offices - Brick, Stone & Frame construction	$ 10,266 00	$ 51,167 79	$ 2,406 70	$ 524 22	$ 3,445 67	$ 3,839 41

Explanation of deductions claimed in Column 6 Commission on Rent Collection, Light, Heat, Janitor Service, Insurance, etc.

SCHEDULE C—PROFIT FROM SALE OF REAL ESTATE, STOCKS, BONDS, ETC. (See Instruction 8)

1. Kind of Property	2. Date Acquired	3. Amount Realized	4. Depreciation Allowable Since Acquisition	5. Cost or Value as of March 1, 1913, (Explain in table at foot of page)	6. Improvements	7. Net Profit (Enter as Item 8)
Stocks	Feb.1 & May 1, 1931	$ 9 13	$ 0 00	$ 0 00	$ 0 00	$ 9 13

State how property was acquired by stock dividend

SCHEDULE D—CAPITAL NET GAIN OR LOSS FROM SALE OF ASSETS HELD MORE THAN TWO YEARS (See Instruction 8a)

1. Kind of Property	2. Date Acquired (Mo. Day Year)	3. Date Sold (Mo. Day Year)	4. Amount Realized	5. Depreciation Allowable Since Acquisition	6. Cost or Value as of March 1, 1913, (Explain in table at foot of page)	7. Improvements	8. Net Gain or Loss (Enter Item 9 or Item 10)
Stocks	9/25/28	Oct. 7 & 22, 1931	$ 11,110 15	$ 0 00	$ 9,516 96	$ 0 00	$ 1,593 19

State how property was acquired by purchase and bequest

SCHEDULE E—INTEREST ON LIBERTY BONDS AND OTHER OBLIGATIONS OR SECURITIES (See Instruction 9)

1. Description of Securities	2. Interest Received or Accrued	3. Amount Owned	4. Principal Amount Exempt From Taxation	5. Amount Owned in Excess of Exemption	6. Interest on Amount in Excess of Exemption (Enter on Item 9)
(a) Obligations of a State, Territory, or political subdivision thereof, or the District of Columbia	$ 77,653 67	$ 17,15[illegible] 00	All	xxxxxx xx	xxxxxx xx
(b) Securities issued under Federal Farm Loan Act, or under such Act as amended, Treasury Bills, and Treasury Certificates of Indebtedness	19,164 06	4[illegible] 00	All	xxxxxx xx	xxxxxx xx
(c) Liberty 3½% Bonds and other obligations of United States issued on or before September 1, 1917, and obligations of U. S. possessions	175 00	[illegible] 00	All	xxxxxx xx	xxxxxx xx
(d) Liberty 4% and 4½% Bonds, Treasury Bonds, and Treasury Savings Certificates	748 00	17,600 00	96,000	$ 12,600 00	$ 535 50
(e) Treasury Notes	0 00	0 00	None	0 00	0 00

SCHEDULE F—EXPLANATION OF DEDUCTIONS CLAIMED IN ITEMS 1, 14, 16, 17, AND 18

Item 14: Local, County & State Taxes on Real Estate, Personal Property, etc., Taxes on Club Dues, etc. Automobile & Drivers' Licenses, etc.

Item 16: Uncollectable Demand Loan - Debtor adjudged Bankrupt and Note worthless

Item 17: Contributions - Schedule hereto attached

Item 18: Office expenses, including Salaries and necessary incidental expenses.

EXPLANATION OF DEDUCTION FOR DEPRECIATION CLAIMED IN SCHEDULES A AND B

1. Kind of Property (If Building, state material of which constructed)	2. Date Acquired	3. Age When Acquired	4. Probable Life After Acquisition	5. Cost or Value as of March 1, 1913, (Explain in table at foot of page)	Amount of Depreciation Claimed on 6. Previous Years	Amount of Depreciation Claimed on 7. This year
Dwelling House - Frame	Jan.14,1920	Unknown	50 yrs.	$ 4,194 [illegible]	1,24[illegible] 22	12[illegible] 80
Dwelling House - Frame	Feb.13,1920	Unknown	50 yrs	4,[illegible] [illegible]	1,29[illegible] 07	12[illegible] 78
~~Stores, Offices & Garage-Brick~~	~~Jun-10,1927~~	~~New~~	~~50 yrs~~	~~88,644 [illegible]~~	~~4,[illegible] 47~~	~~1,77[illegible] 89~~
Stores, Offices, Dwellings & Apartments-Stone, Brick, Frame	Nov. 4,1931	various	25/50 yrs.	132,[illegible] 77	0 00	739 21

EXPLANATION OF DEDUCTION FOR LOSSES BY FIRE, STORM, ETC., CLAIMED IN SCHEDULE A, AND IN ITEM 15

1. Kind of Property	2. Date Acquired	3. Cost or Value as of March 1, 1913, (Explain in table at foot of page)	4. Improvements	5. Depreciation Allowable Since Acquisition	6. Insurance and Salvage Value	7. Deductible Loss
		$	$	$	$	$

8—16...

Exhibit "N"
3rd page.

CONTRIBUTIONS - 1931 - GEORGE W. ELKINS

Abington Memorial Hospital, Abington, Penna.	$ 26,055.67
Welfare Federation, Philadelphia, Pa.	5,000.00
United Campaign, 311 S. Juniper St., Philadelphia, Pa.	5,000.00
St. Paul's P. E. Church, Elkins Park, Penna.	500.00
Deaconess Hospital, Boston, Mass. (thru Dr. F. H. Lahey)	500.00
Phila. Council, Boy Scouts of America, Philadelphia, Pa.	300.00
Christmas Baskets (thru American Legion Auxiliary, Jenkintown, Pa.)	297.02
Meadowbrook Chapel, Huntingdon Valley, Pa.	250.00
St. Luke's & Children's Hospital, Philadelphia, Pa.	200.00
Archdeacon B. M. Spurr, Missionary, Moundsville, W. Va.	250.00
Asbourne Boy Scout Troop No. 1, Elkins Park, Pa.	25.00
American National Red Cross	25.00
Jenkintown Day Nursery, Jenkintown, Pa.	10.00
Total	$ 58,412.69

a3

EXHIBIT "O". 83

Form 1116
TREASURY DEPARTMENT
INTERNAL REVENUE SERVICE

CLAIM FOR CREDIT ON INDIVIDUAL INCOME TAX RETURN FOR TAXES PAID OR ACCRUED TO A FOREIGN COUNTRY OR A POSSESSION OF THE UNITED STATES

TO BE FILED BY AN INDIVIDUAL, PARTNERSHIP, OR FIDUCIARY

For Taxable Year 1931

Name of Claimant GEORGE M. ELKINS

Address 419 YORK ROAD (Street and number), JENKINTOWN (City or town), PENNSYLVANIA (State)

To be filled in if claimant is an individual

Claim for credit is hereby made by the taxpayer named above, who is a citizen or subject of UNITED STATES (Name of country) and is a resident of UNITED STATES (Name of country), on the attached income tax return, which is based on income received (Received or accrued) for the taxable year begun January 1st, 1931, and ended December 31st, 1931 for taxes Paid (Paid or accrued)[1], as follows:

SCHEDULE A—Tax Paid or Accrued to a Possession of the United States[2]

Name of possession of U. S. _____ Character of tax _____ (Income, war profits, or excess profits)

Statute imposing tax _____ (To be named fully and clearly so as to be easily identified)

Date of accrual _____ (To be given even if claim is based on payment) Date of payment (if paid) _____ (To be given even if claim is based on accrual)

1. Amount of tax[3] (evidenced by attached receipt or return) _____ (In foreign money)[4], which (converted at an exchange rate of _____[5]) equals in dollars _____ $0.00

2. Income from sources in this possession _____ (In foreign money)[4] which (converted at an exchange rate of _____[5]) equals in dollars (Reported on attached Form 1040, as Item _____) $0.00

SCHEDULE B—Tax Paid or Accrued to a Foreign Country[2]

Name of foreign country Great Britain Character of tax Income Tax (Income, war profits, or excess profits)

Statute imposing tax Current Income Tax Law of Great Britain (To be named fully and clearly so as to be easily identified)

Date of accrual December 9th, 1931 (To be given even if claim is based on payment) Date of payment (if paid) December 9th, 1931 (To be given even if claim is based on accrual)

1. Amount of tax[3] (evidenced by attached receipt or return) £659-12-5 (In foreign money)[4], which (converted at an exchange rate of $3.32[5]) equals in dollars _____ $2,189.91

2. Income from sources in this foreign country _____ (In foreign money)[4], which (converted at an exchange rate of _____[5]) equals in dollars (Reported on attached Form 1040, as Item 14 & 54) $_____

SCHEDULE C—Tax Withheld Under a Law of a Foreign Country[2] or Possession of the United States[2]

Name of foreign country Great Britain Character of tax Income (Income, war profits, or excess profits)

Statute imposing tax Current Income Tax Law of Great Britain (To be named fully and clearly so as to be easily identified)

Name of withholding agent: Commissioner of Inland Revenue Date of withholding Various

1. Amount of tax withheld (evidenced by attached receipts or statement from withholding agent) £1,495-8-5 (In foreign money), which (converted at an exchange rate of various[5]) equals in dollars $7,017.11

2. Income from sources in above-named country or possession, which is not included in any other schedule on this form £ 6,598-5-7 (In foreign money)[4], which (converted at an exchange rate of various[5]) equals in dollars (Reported on attached Form 1040, as Item 11 a) $31,010.83

2—16727

(See Reference on page 2)

84

Exhibit "O" page 2.

SCHEDULE D—Income from Sources Without the United States on which no Income or Profits Taxes Were Imposed

1. Name of country GREAT BRITAIN

2. Amount of income £ 15-15-5 [4], which (converted at an exchange rate of various [5]) equals in dollars (Reported on attached Form 1040, as Item 11 b) $ 60.44

SCHEDULE E—Tax Paid or Accrued to a Foreign Country or a Possession of the United States by a Partnership, Estate, or Trust, in which Claimant has an Interest

Partnership, estate, or trust _____ (Name) _____ (Address)

Fiduciary (if estate or trust) _____ (Name) _____ (Address)

Character and extent of claimant's interest in partnership, estate, or trust _____

Name of foreign country or possession of U. S. _____ Character of tax _____ (Income, war profits, or excess profits)

Statute imposing tax _____ (To be named fully and clearly so as to be easily identified)

Date of accrual _____ (To be given even if claim is based on payment) Date of payment (if paid) _____ (To be given even if claim is based on accrual)

1. Total tax paid by partnership or fiduciary _____ [4] (In foreign money), which (converted at an exchange rate of _____ [5]) equals in dollars _____ $ _____

2. Claimant's share of such tax as reported on partnership or fiduciary return _____ _____

3. Total net income derived from partnership or fiduciary (Reported on Form 1040, as Item _____) _____ _____

4. That portion of such income which was derived from sources without the United States _____ _____

– To be filed in if the claimant is a partnership or fiduciary

SCHEDULE F—Tax Paid or Accrued to a Foreign Country or Possession of the United States by a Partnership, Estate, or Trust

Partnership, estate, or trust _____ (Name) _____ (Address)

Fiduciary (if estate or trust) _____ (Name) _____ (Address)

The attached _____ (Partnership or fiduciary) return is based on income _____ (Received or accrued) during the taxable year begun _____, 19 , and ended _____ 19

Name of foreign country or possession of U. S. _____ Character of tax _____ (Income, war profits, or excess profits)

Statute imposing tax _____ (To be named fully and clearly so as to be easily identified)

Date of accrual _____ (To be given even if claim is based on payment) Date of payment (if paid) _____ (To be given even if claim is based on accrual)

1. Total amount of this tax payment or accrual (evidenced by attached receipt or return) _____ [4] (In foreign money), which (converted at an exchange rate of _____ [5]) equals in dollars _____ $ _____

2. Total net income reported on attached partnership or fiduciary return _____ _____

3. That portion of such income which was derived from sources without the United States _____ _____

REFERENCES

[1] If attached income return is based on income "accrued," or you elect under Section 131 (d) to claim credit for taxes accrued, write "accrued" in the space provided. (See Section 131 (d) and instructions on page 4.)

[2] To secure credit for taxes paid or accrued to possessions of the United States, claimant must be a citizen other than a citizen entitled to benefits of Section 251, or resident of the United States.

[3] "Amount of tax" means tax proper, excluding any amount that represents interest or penalties. If the tax has been actually paid in full, the amount of the tax (excluding interest and penalties) so paid is the amount to be entered in this blank, even though the claim be based on the accrual of the tax.

[4] State this amount in the currency of the foreign country or possession of the United States (e. g., pounds, francs, marks).

[5] Give the rate of exchange used and attach a statement supplying in reasonable detail why and how this particular rate was determined.

[6] To secure credit for taxes paid or accrued to a foreign country, claimant must be a citizen other than a citizen entitled to benefits of Section 251, or resident of the United States. Moreover, if he is an alien resident, he must be a citizen or subject of a foreign country which allows "a similar credit to citizens of the United States residing in such country." (See Section 131 (a) on page 4.)

[7] Where there is more than one possession of the United States or one foreign country to which taxes are paid by claimant individually, or by partnership, estate, or trust in which claimant has an interest, additional schedules should be attached, and the credit claimed on such supplemental schedules should be included in this Summary.

2—15707

SCHEDULE D—Income from sources without the United States on which no Income or Profits Taxes were imposed

1. Name of Country ——— FRANCE ———

2. Amount of Income ——— 18,123.10 frs. ——— which (converted at an exchange rate of ——— various ———)
equals in dollars (Reported on attached Form 1040 as Item 11 b) ——— $706.27

Exhibit "O" page 3.

SUMMARY OF INCOME RECEIVED AND TAXES PAID, AS SHOWN IN SCHEDULES A TO E ON PAGES 1 AND 2

	Column A Income		Column B Taxes paid or accrued
Schedule A, Item 2	$	Schedule A, Item 1	$
Schedule B, Item 2		Schedule B, Item 1	2,189.91
Schedule C, Item 2	31,010.83	Schedule C, Item 1	7,017.11
Schedule D, Item 2	766.71	Schedule E, Item 2	0.00
Schedule E, Item 4	0.00	Total (enter as Item II below)	$ 9,207.02
Total (enter as Item III below)	$ 31,777.54		

I. Net income from sources without United States (total of Column A minus total of Column B)	$ 22,570.52
II. Total tax paid or accrued to foreign countries or possessions of United States	9,207.02
III. Total net income, from sources without United States (computed without deductions for any income and profits taxes imposed by any foreign country or possession of United States)	$ 31,777.54
IV. Total net income from all sources (computed without deduction for any income and profits taxes paid or accrued to foreign countries or possessions of United States)	$216,680.33
V. Ratio of income from sources without United States to total income from all sources (Item III divided by Item IV)	14.665%
VI. Total United States income tax on Item IV	$ 34,401.55
VII. Amount of tax which may be claimed as a credit in Item 54 on Form 1040, or Item 16 on Form 1040A, attached (Item VI multiplied by Item V, or Item II, whichever amount is the smaller)	$ 5,044.99

AFFIDAVIT

I swear (or affirm) that the above is to the best of my knowledge and belief a true and complete statement of facts in connection with the claim for credit for taxes above made.

(If claim is made by agent, the reason therefor must be stated on this line)

Sworn to (or affirmed) and subscribed before me this 12th day of March, 1923.

Julianne H. Mayer
(Signature of officer administering oath)
NOTARY PUBLIC
(Official capacity)

George W. Lorance
(Signature of claimant or agent)

(Address of agent)

(See References on page 2)

3—18737

Exhibit "D" page 4.

EXTRACTS FROM SECTION 131 OF THE REVENUE ACT OF 1928

TAXES OF FOREIGN COUNTRIES AND POSSESSIONS OF UNITED STATES

SEC. 131. (a) **Allowance of Credit.**—The tax imposed by this title shall be credited with:

(1) CITIZEN AND DOMESTIC CORPORATION.—In the case of a citizen of the United States and of a domestic corporation, the amount of any income, war-profits, and excess-profits taxes paid or accrued during the taxable year to any foreign country or to any possession of the United States; and

(2) RESIDENT OF UNITED STATES.—In the case of a resident of the United States, the amount of any such taxes paid or accrued during the taxable year to any possession of the United States; and

(3) ALIEN RESIDENT OF UNITED STATES.—In the case of an alien resident of the United States, the amount of any such taxes paid or accrued during the taxable year to any foreign country, if the foreign country of which such alien resident is a citizen or subject, in imposing such taxes, allows a similar credit to citizens of the United States residing in such country; and

(4) PARTNERSHIPS AND ESTATES.—In the case of any such individual who is a member of a partnership or a beneficiary of an estate or trust, his proportionate share of such taxes of the partnership or the estate or trust paid or accrued during the taxable year to a foreign country or to any possession of the United States, as the case may be.

(b) **Limit on Credit.**—In no case shall the amount of credit taken under this section exceed the same proportion of the tax (computed on the basis of the taxpayer's net income without the deduction of any income, war-profits, or excess-profits tax any part of which may be allowed to him as a credit by this section), against which such credit is taken, which the taxpayer's net income (computed without the deduction of any such income, war-profits, or excess-profits tax) from sources without the United States bears to his entire net income (computed without such deduction) for the same taxable year.

(c) **Adjustments on Payment of Accrued Taxes.**—If accrued taxes when paid differ from the amounts claimed as credits by the tax payer, or if any tax paid is refunded in whole or in part, the taxpayer shall notify the Commissioner, who shall redetermine the amount of the tax for the year or years affected, and the amount of tax due upon such redetermination, if any, shall be paid by the taxpayer upon notice and demand by the collector, or the amount of tax overpaid, if any, shall be credited or refunded to the taxpayer in accordance with the provisions of section 322. In the case of such a tax accrued but not paid, the Commissioner as a condition precedent to the allowance of this credit may require the taxpayer to give a bond with sureties satisfactory to and to be approved by the Commissioner in such sum as the Commissioner may require, conditioned upon the payment by the taxpayer of any amount of tax found due upon any such redetermination; and the bond herein prescribed shall contain such further conditions as the Commissioner may require.

(d) **Year in Which Credit Taken.**—The credits provided for in this section may, at the option of the taxpayer and irrespective of the method of accounting employed in keeping his books, be taken in the year in which the taxes of the foreign country or the possession of the United States accrued, subject, however, to the conditions prescribed in subsection (c) of this section. If the taxpayer elects to take such credits in the year in which the taxes of the foreign country or the possession of the United States accrued, the credits for all subsequent years shall be taken upon the same basis.

(e) **Proof of Credits.**—These credits shall be allowed only if the taxpayer furnishes evidence satisfactory to the Commissioner showing the amount of income derived from sources without the United States, and all other information necessary for the verification and computation of such credits.

* * * * *

INSTRUCTIONS

WHEN CREDIT FOR TAXES MAY BE TAKEN.—The credit for taxes provided by section 131 (a) may ordinarily be taken either in the return for the year in which the taxes accrued or in which the taxes were paid, dependent upon whether the accounts of the taxpayer are kept and his returns filed upon the accrual basis or upon the cash receipts and disbursements basis. Section 131 (d) allows the taxpayer, at his option and irrespective of the method of accounting employed in keeping his books, to take such credit for taxes as may be allowable in the return for the year in which the taxes accrued. An election thus made under this section or under section 222 (c) of the Revenue Act of 1924 or 1926 must be followed in returns for all subsequent years.

U. S. GOVERNMENT PRINTING OFFICE 1928 8—15737

APPENDIX "B".

Full Texts of ~~Relevant~~ British Court Opinions and Judgments Offered by Petitioner and Respondent.

PETITIONER'S EXHIBIT NO. 19.

No. 402.—In the High Court of Justice (King's Bench Division).—9th November, 1916.

Court of Appeal—12th December, 1917.

Marion Brooke (*formerly* Marion Price) v. The Commissioners of Inland Revenue (1).

Super-tax.—Residence abroad.—Married woman living apart from her husband.—Income derived from property in United Kingdom.—Finance

(1) Reported 115 L.T. 715; 118 L.T. 821.

(1909-10) *Act*, 1910 (10 *Edw.* 7, *c.* 8), *Sections* 66 (2) *and* 72 (2).—*Income Tax Act*, 1842 (5 *& 6 Vict. c.* 35), *Section* 45.

The Appellant, a British subject, was separated from her husband, and from 1908 *to* 1914 *had no residence in this country. She did not come to the United Kingdom during either of the years ended* 5*th April*, 1911, *and* 5*th April*, 1912, *but resided in France, apart from her husband. Her income was entirely derived from property in this country. On* 14*th June*, 1912, *the marriage with her first husband was dissolved. In March*, 1914, *she re-married, and lived with her second husband in France. Owing to war conditions, the Appellant left France in October*, 1914, *and came to England, where she has resided since that date, though with no intention to make her permanent home here. In March*, 1915, *an assessment to Super-tax was made on her for the year ended* 5*th April*, 1912.

Held, *that Appellant was chargeable with Super-tax for the year ended* 5*th April*, 1912, *although not resident in the United Kingdom during that year, and was rightly charged in her own name.*

CASE.

Stated under the Finance (1909-10) Act 1910 section 72 (6) and 43 and 44 Vic. ch. 19 sec. 59 by the Commissioners for the Special Purposes of the Income Tax Acts for the opinion of the King's Bench Division of the High Court of Justice.

1. At a meeting of the Commissioners for the Special Purposes of the Income Tax Acts held at York House Kingsway London on the 29th September 1915 for the purpose of hearing Appeals Marion Brooke (hereinafter called the Appellant) appealed against an assessment to the super-tax in the sum of £11,000 less £3,000 Statutory allowance that is to say £8,000 net for the year ended 5th April 1912 made upon her by the description of Mrs. Marion Brooke (formerly Mrs. Marion Price) under the provisions of (*inter alia*) Sections 66 and 72 (7) of the Finance (1909-10) Act 1910.

2. The Appellant a British subject is a daughter of the late Mr. John Peter Robinson at one time a Draper of Oxford Street London and in 1900 married Mr. Owen Talbot Price with whom for many years she lived in England. Subsequently however she separated from her husband. She left England in 1908.

During the years respectively ended the 5th April 1911 and the 5th April 1912 she resided apart from her husband in France and had no residence in the United Kingdom. She did not come to the United Kingdom during those years. On the 14th June 1912 the marriage between the Appellant and the said Mr. Owen Talbot Price was on his petition dissolved by a decree of the Probate Divorce and Admiralty Division (Divorce) of the High Court of Justice.

3. On the 12th March 1914 the Appellant married in Paris Mr. Joseph Hewlett Brooke and they thereafter lived in France where the Appellant had up to and including the date of the hearing of the Appeal against the said assessment a residence which in the early period of the war came to be in the occupation of the Germans. The Appellant in October 1914 left France and ever since that event has lived either in a furnished flat or a

furnished house in England. When she thus left France neither she nor her husband (who joined His Majesty's Military forces in the course of the war) had any intention permanently to reside in the United Kingdom. The Appellant and her husband have always intended to return to France as their place of residence directly the circumstances admit of their doing so. The said Mr. Joseph Hewlett Brooke has not had any residence in the United Kingdom nor has he carried on any trade business or profession there since his marriage to the Appellant. He has not had any income in the United Kingdom since his marriage beyond his Army pay in the course of the war.

4. The Appellant is entitled under the Will of her Father who died in 1895, to a life interest in a share of his residuary estate and is restrained from anticipating such interest. The investments representing such residuary estate are all British and stand in the names of the Trustees of that Will who are British subjects resident in England. The said Trustees have year by year received all the income derived from the said share of the Appellant less the appropriate amounts of income tax thereon which were deducted at the source.

Such Trustees have year by year rendered to the Appellant statements of account of such income including the accounts of such income for the year ended 5th April 1911 which they duly paid over to her. Nearly the whole of the income of the Appellant during the year ended the 5th April 1911 was derived from the said share and that income and the rest of her income in that year were received by her after the appropriate amounts of income tax in each instance had been deducted at the source.

5. It is unnecessary in our opinion for the purpose of this case to refer in any greater detail than we have done to the said Will and the contents of it.

6. The precise method of payment to the Appellant by the said Trustees of her income from the said share has been to pay the amounts which they have received as aforesaid to the Bankers of the Appellant in England for the credit of her account.

7. For the purposes of the super-tax to be charged for the year ended the 5th April 1912 (the year in question in this case) it was not denied that the Appellant received a notice requiring her to make a return of her total income from all sources for the year ended the 5th April 1911. Acting under advice the Appellant declined to make such a Return on the ground that no assessment to the super-tax in respect of such total income fell to be made. The said assessment of £11,000 (or £8,000 net as aforesaid) which assessment is hereinafter referred to as "the assessment" was made upon her on 15th March 1915 when she was in England and notice of such charge was served upon her in England. On the 18th May 1915 the Appellant by her Solicitors gave notice of appeal against the assessment whilst at the same time intimating that the grounds of such appeal would include the following namely :—

> "That the said Marion Brooke is not an individual liable to "super-tax; that she is not liable to be assessed to super-tax on "account of the total income as mentioned in the said assessment "or any of it, and that the said Marion Brooke is a married woman "living with her husband and is resident out of the jurisdiction and "was not resident in the jurisdiction during any part of the year "of assessment; and that the said assessment is bad in law."

In due course the said Commissioners issued their Precept to the Appellant requiring a schedule to contain particulars of her total income from all sources for the year ended the 5th April 1911—and on the 5th July 1915 the Solicitors to the Appellant rendered certain particulars of her income on her behalf whilst at the same time expressly stating that such particulars were rendered without in any way thereby admitting any liability on her part either to super-tax or to render any account in respect of her income.

8. It was agreed in the course of the hearing of the Appeal against the assessment that for the purpose of this case in the event of the Appellant being held to be liable to be chargeable with and assessable to the super-tax the appropriate total income of the Appellant when estimated in the manner prescribed by Section 66 of the Finance (1909-10) Act 1910 was £9,864 and the assessment would fall to be reduced to that sum.

9. Mr. A. M. Latter (Counsel) at the hearing before us contended (*inter alia*) for the Appellant

(i) that as the Appellant during the year for which the assessment was made was not resident in the United Kingdom and was out of the jurisdiction the assessment could not be upheld.

(ii) that if there was no jurisdiction to charge her with the assessment by reason of her not being resident in the United Kingdom the jurisdiction to charge and to assess her could not be found merely because she afterwards came (and as it happened fortuitously) into the United Kingdom temporarily at a time within the period of three years after the 5th April 1912 within which period an assessment if otherwise valid would be made in time (Sub-section 2 of the Section 23 of the Finance Act 1907).

(iii) that if any right to assess the super-tax for the year in question arose from the fact that the Appellant was within the jurisdiction in 1915 the proper individual on that hypothesis to have been charged with the assessment which in fact was made in March 1915 would be the husband of the Appellant because at the time of the assessment viz. 15th March 1915 the fact that the Appellant was a married woman fell to be taken into account.

(iv) that the charge to the super-tax in respect of the total income from all sources of an individual under Section 66 Finance (1909-10) Act 1910 does not include the power to assess any individual in the world as it has to be borne in mind that the liability to the charge is limited by a condition precedent viz. that of residence.

Mr Latter also referred to the case of *Purdie* v. *the King*.(*)

10. It was contended (*inter alia*) for the Crown (the Respondents)—

(i) that a non resident could be charged to the super-tax. There was no limitation whatever such as residence to be found in regard to liability to the super-tax.

(ii) that the condition of the Appellant in the year for which the assessment was made fell to be regarded and that Section 45 of the Income Tax Act 1842 was all sufficient authority for

(*) (1914) 3 K B 112.

charging the Appellant with the assessment in her own name because she was in that year a married woman living separate from her then husband.

On behalf of the Crown reference was made to the following cases :—

Tischler and Company v. *Apthorpe*(1) ([1885] 52 L.T. 814); *Werle and Company* v. *Colquhoun*(2) ([1888] 20 Q.B.D. 753) and *Colquhoun* v. *Brooks*(3) ([1889] 14 App. Cas. 493).

11. Mr. Latter in reply joined issue and asked us to discharge the assessment as being bad in law.

12. Upon consideration of the facts and arguments we held that the super-tax should be charged to the Appellant and an assessment made upon her for the year ended the 5th April 1912 in respect of her duly estimated total income from all sources in the United Kingdom and we so held because we were of the opinion that any individual wherever resident whose total income in the United Kingdom when estimated in the manner prescribed by the Finance (1909-10) Act 1910 exceeded £5,000 was chargeable in respect of such income with the additional duty of income tax which in such Act is referred to as a super-tax. As the appropriate total income from all sources (so estimated) had been in that event admitted to be £9,864 we reduced the assessment to £9,864 less the statutory allowance of £3,000 that is to say to £6,864 net.

13. The Appellant by her Counsel immediately upon the determination of the Appeal gave notice of dissatisfaction with our decision as being erroneous in point of law and in due course required us to state a Case for the opinion of the High Court pursuant to the Finance (1909-10) Act 1910 Section 72 (6) and 43-44 Vic. ch. 19 Section 59 (1) which case we have stated and do sign accordingly.

APPENDIX.

We were requested by Mr. Latter after we had determined the Appeal the subject of the above Case to bring to the notice of the High Court in the event of such a Case being demanded some further information which was already on record in the Office of the Special Commissioners of Income Tax. Whether this Appendix be regarded as proper or improper to be read in connection with the above Case and as essential or not to the due consideration of our Determination of the Appeal the subject of that case we have pursuant to such request inserted in the succeeding paragraphs as much information as in our opinion may suitably comply with that request.

A.—On the 3rd April 1914 an assessment (by virtue of Section 41 of the Income Tax Act 1842 and the Finance Act 1907 Section 23 (2)) to the Super Tax (in the absence of any return) was made in the estimated sum of £11,000 less the Statutory allowance of £3,000, that is to say £8,000 net for the year ended 5th April 1911 those named in the charge to the Super Tax so assessed being as follows viz. " Mrs. Brooke formerly Mrs. Marion Price per Trustees T. B. Clarkson and R. Rabbidge."

B.—The said T. B. Clarkson and R. Rabbidge were in fact during the whole of the year for which that assessment was made two of three

(1) 2 T.C. 89. (2) 2 T.C. 402. (3) 2 T.C. 490.

trustees of the Will of John Peter Robinson referred to in the above case the said T. B. Clarkson being the first in order of those named as Trustees in such Will. The third trustee was William Hitchings who died on 9th December 1911 and was succeeded by Ernest William Robinson on 7th August 1912.

C.—The assessment mentioned in this Appendix was the subject of an appeal which was duly heard on the 7th July 1914 by the Special Commissioners of Income Tax Mr. Latter then appearing for the Appellant and Mr. Hooper for the Crown and was determined in favour of the Appellant (in that Appeal) and such assessment was accordingly discharged.

D.—Though dissatisfaction with that Determination was expressed on behalf of the Crown no demand for a Case to be stated for the opinion of the High Court of Justice was made.

Dated this 27th day of January 1916.

H. W. PAGE-PHILLIPS } Commissioners for the Special
W. J. BRAITHWAITE } Purposes of the Income Tax Acts.

York House, Kingsway,
London, W.C.

The Case was heard before Mr. Justice Atkin, when Mr. Disturnal, K.C., and Mr. A. M. Latter appeared as Counsel for the Appellant, and the Solicitor-General (Sir George Cave, K.C., M.P.), and Mr. T. H. Parr (for Mr. Raymond Asquith, serving with His Majesty's Forces) as Counsel for the Respondents. Judgment was delivered on the 9th November, 1916, in favour of the Crown, with costs.

JUDGMENT.

Atkin, J.—The Appellant in this Case appealed to the Commissioners for the Special Purposes of the Income Tax against an assessment to Super-tax for the year ending April 5th, 1912. The Commissioners affirmed the assessment but reduced it to an agreed amount. The Appellant has appealed to this Court by way of special Case.

The facts are set out in the special Case. It is unnecessary to repeat them here. It is sufficient to say that the Appellant, for the financial year ending April, 1912, was living apart from her husband and resided in France and not at all in this country; that the marriage was subsequently dissolved and she married again; that she and her second husband came to reside in this country in 1914, but not with the intention of permanently residing here; that when so in this country she was assessed to Super-tax by the assessment in question; that the income in respect of which she was so assessed was income of property in the United Kingdom.

The first point that was raised was that, being non-resident in the United Kingdom during the year in question, the Appellant was not liable to pay Super-tax.

The Super-tax was imposed by the provisions of the Finance (1909-10) Act, 1910. Part IV of that Act is entitled "Income Tax" and includes Sections 65 to 72 inclusive, of which Section 66 and Section 72 relate to Super-tax. Section 65 begins: "Income tax for the year beginning "on the sixth day of April nineteen hundred and nine shall be charged "at the rate of one shilling and twopence," and proceeds to make further provisions as to Income Tax. Section 66 begins: "(1) In addition to the "income tax charged at the rate of one shilling and twopence under this "Act, there shall be charged, levied, and paid for the year beginning on "the sixth day of April, nineteen hundred and nine, in respect of the "income of any individual, the total of which from all sources exceeds "five thousand pounds, an additional duty of income tax (in this Act "referred to as a super-tax) at the rate of sixpence for every pound of the "amount by which the total income exceeds three thousand pounds." The Section proceeds to make various provisions as to the calculation of the income for Super-tax purposes. Sections 67, 68, 69, 70 and 71, relate to Income Tax; and Section 72 again relates to Super-tax and contains special provisions as to how and by whom the Super-tax shall be assessed and charged. Sub-section (2) imposes a duty upon "every person upon "whom notice is served . . . by the Special Commissioners" to make a return of all his income, while Sub-section (3) imposes a duty upon "every person chargeable with the super-tax to give notice that he "is chargeable to the Special Commissioners before the thirtieth day of "September in the year for which the super-tax is chargeable." Sub-section (6) provides that "All provisions of the Income Tax "Acts relating to persons who are to be chargeable with duty, "assessments, and appeals against those assessments, and to "the collection and recovery of duty, . . . shall, so far as they "are applicable, apply to the charge, assessment, collection, and "recovery of duty under this section." Sub-section (8) gives power to the Commissioners to make regulations for the purpose of carrying this Section into effect. Regulations have been duly made. The effect of the Act and the regulations appears to be that the liability imposed by the Act is enforced by the Special Commissioners serving a notice upon every person required by them to make a return of his total income: and, upon such return being made, or default in making it, by the Commissioners making an assessment to Super-tax and serving notice thereof upon the individual assessed. The effect of the two Sections appears to be that Super-tax is Income Tax (see *Bowles* v. *The Attorney-General*(1)), though subject to special provisions. The income in respect of which it is imposed is the total income from all sources, estimated in the same manner as the total income from all sources is estimated for the purposes of exemptions or abatements under the Income Tax Acts and the Finance (1909-10) Act, 1910, Section 66 (2). This reference incorporates (*inter alia*) Section 163 of the Income Tax Act, 1842—"the aggregate annual amount of his income, estimated "according to the several rules and directions of this Act"—and in this way are incorporated the various Schedules to the Act of 1853. The

(1) 5 T.C. 685.

provisions of the Income Tax Acts as to persons who are to be chargeable with duty are applied so far as they are applicable. Inasmuch as the Super-tax (Section 66 (1)) is only to be charged, levied and paid in respect of the income of any individual, this appears to exclude corporations from persons chargeable. The substance of the enactment appears to be that persons chargeable with Income Tax (except corporations) are chargeable with Super-tax; and that the income in respect of which they are charged is the aggregate of, what I may call, Income Tax income. It is plain that non-residents are chargeable with Income Tax, for instance, on income derived from property within the United Kingdom—Income Tax Act, 1853, Section 2, Schedule D—and I think it follows that non-residents are charged with Super-tax in respect of such property as they are chargeable with Income Tax. The words of Section 66 (1), "the income of any individual," are wide enough to cover non-residents. Indeed, they are so wide that they are clearly subject to some restriction. Moreover, there is the express allowance of a special deduction made by Section 66 (2) (*c*). "In the case of a person in the service of the Crown abroad"; and the incorporation, by Section 72 (2), of the provisions of Section 41 of the Act of 1842, enabling notice to be served on a person representing a non-resident person, seems to make the intention of the Legislature clear.

But it was said that the machinery for imposing liability by return and notice of assessment can only be made effectual when the individual is within the United Kingdom, and this indicates that it was not intended to impose a liability upon non-residents. If you can find a person responsible under Section 41, you can apply your machinery to him: otherwise you cannot enforce any liability.

In this case it is not necessary to decide whether notice to make a return and notice of assessment, when made, can be given to a non-resident, whether a British subject or not, though, apart from the exercise of any penal provisions over foreigners, I have considerable difficulty in seeing why the requisite machinery cannot be applied to non-residents. In the case of Super-tax the Commissioners are not hampered with the difficulties of local assessments as in the case of the Income Tax. But in the present Case the Appellant was assessed and given notice of assessment while resident in the United Kingdom within the period permitted by the Acts. As to the provisions of Section 41, it had been held that, in the case of a foreigner carrying on business in this country, Section 41 is merely auxiliary to the general powers of the Revenue authorities, and that, if the foreigner ordinarily non-resident is found resident in the United Kingdom, the ordinary machinery applicable to a resident can be applied to him (*Tischler* v. *Apthorpe*,(1) approved in the Court of Appeal in *Werlé* v. *Colquhoun*(2)). These Cases appear to shew conclusively that in the case of a non-resident the Commissioners are not restricted to the means provided by Section 41.

It was further contended on behalf of the Appellant that in respect of the particular income in this Case, the Appellant never became chargeable at all either to Income Tax, or, *a fortiori*, to Super-tax. The Income Tax in respect of the whole income was deducted at the source, being derived either from public securities or from the securities of municipal or other corporations. In these circumstances it is said that the Appellant, even

(1) 2 T.C. 89. (2) 2 T.C. 402.

if resident here, was not herself chargeable with Income Tax, and therefore is not liable to Super-tax. The only persons chargeable with Income Tax under these circumstances are, it is said, the persons who make the deduction. Even if the proposition were true as to Income Tax, it would appear to me to be untrue as to Super-tax, for, by Section 66 (1), the Super-tax is charged " in respect of the income of any individual ", the income being defined to be the total income from all sources; and by Section 72 (3) it is the duty of every person chargeable with the Super-tax to give notice that he is chargeable, and by " every person chargeable " I should understand to be meant every individual in respect of whose income Super-tax is charged under Section 66 (1). But I think it is fallacious to say that the individuals who receive income from which Income Tax is deducted at the source are not chargeable with the tax. I think there is some authority for the Appellant's contention in the judgment in *Purdie* v. *The King*.(1) The judgment in that Case may be unassailable, but with the greatest respect I find it difficult to reconcile some of the reasoning of the learned judge in that Case with the reasons given by the noble Lords in the Case of *Ashton Gas Company* v. *The Attorney-General*,(2) which does not seem to have been cited in *Purdie* v. *The King*.(1) If the payee has not paid Income Tax by allowing the deductions, as by the appropriate Sections he is compelled to do, it is difficult to see how he escapes paying Income Tax on the net sum that comes into his hands. Section 163 of the Act of 1842, in terms, seems to decide this point. It speaks " of any person charged or chargeable " to the duties granted by this Act either by assessment, or by way of " deduction from any rent, annuity, interest, or other annual payment " to which he may be entitled." See also the Taxes Management Act, 1880, Section 82. In truth, this contention, if sound, is applicable in no way specially to non-residents, but would apparently exempt from Super-tax all income from which Income Tax was deducted at the source. Such a construction of the Act would defeat the clear intention of the Legislature and cannot be adopted.

The next contention that was made on the part of the Appellant was that, even if Super-tax were chargeable in respect of the income of the Appellant, at the date of the assessment she was married and living with her present husband, and, therefore, pursuant to Section 45 of the Act of 1842, the income should be charged in the name of the husband. But the profits which are charged in this Case are the profits for the year ending 5th April, 1912, and were not in that year the profits of a married woman living with her husband (for the Appellant was that year living apart from her then husband) and, therefore, are not to be deemed the profits of the husband. I think, therefore, that the provisions of Section 45 do not apply, and that the profits are not to be charged in the name of the husband.

The Appellant's last contention was that the decision of the Special Commissioners in reducing the amount of the assessment was irregular, inasmuch as the Commissioners had not had before them the evidence of the Appellant or other lawful evidence pursuant to Section 57 (6) of the Taxes Management Act, 1880. But it appears from the Case that the reduction was made by agreement, and under the circumstances this objection is not open to the Appellant.

(1) (1914) 3 K.B. 112. (2) (1906) A.C. 10

I am much indebted to Counsel on both sides, including Mr. Parr, for a very careful argument. I think I have considered all the contentions put before me. For the reasons I have given the appeal fails, and must be dismissed with costs.

Mrs. Brooke having given Notice of Appeal, the Case came on for hearing in the Court of Appeal before Lord Justice Swinfen Eady, Lord Justice Warrington and Lord Justice Scrutton on the 12th December, 1917, when judgment was given in favour of the Crown, affirming the decision of the Court below, with costs. Mr. Disturnal, K.C., and Mr. A. M. Latter appeared as Counsel for the Appellant, and the Solicitor-General (Sir Gordon Hewart, K.C., M.P.) and Mr. T. H. Parr appeared as Counsel for the Crown.

JUDGMENT.

Swinfen Eady, L.J.—We need not trouble you, Mr. Parr. This is an Appeal by Mrs. Brooke from a decision of Mr. Justice Atkin on a special Case stated under the Income Tax and Finance Acts, and it raises the question whether the Appellant is liable to be charged for Super-tax. She was assessed by the Special Commissioners. The Special Commissioners stated a Case for the opinion of the Court, and the learned judge upheld the assessment and decided that she was liable to be assessed. From that judgment Mrs. Brooke appeals, and the appeal raises the question, the very short point, as to whether, in the case of a person whose total income in the United Kingdom exceeds £5,000 but who lives abroad, such a person is liable to be assessed in this country for Super-tax. Now that question depends upon the construction of the Income Tax and Finance Acts. It appears from the special Case that the Appellant, Mrs. Brooke, was formerly Mrs. Price, a British subject, and she is the daughter of the late Mr. John Peter Robinson, a draper of Oxford Street. She married first Mr. Price and lived in England with him for many years. Subsequently she separated from him and left England. The year we have to deal with in the present Case in respect of which the assessment has been made upon her is the year ending the 5th April, 1912. During no part of that year was she residing in England; she was residing apart from her husband in France, her husband being domiciled in England. The figures upon which she had been assessed are upon a total income for the year ending 5th April, 1912, estimated in accordance with the provisions of the statute, to which I will call attention directly, and her income was arrived at as being £9,864. From that she is entitled to a reduction of £3,000, leaving the income for that year upon which Super-tax is assessed at £6,864. Now, that figure is an agreed figure. The parties raise no question on this appeal with regard to the amount, but the Appellant denies that she is liable to be assessed to Super-tax at all. That is her point. The ground upon which the appeal is based is that, notwithstanding the wide general language of

the statute, she is, and at all material times was, residing out of the United Kingdom, and it is said that, according to the true construction of the Act, it cannot have been intended to charge persons resident abroad with Super-tax in this country.

Now the Super-tax was imposed by the Finance (1909-10) Act, 1910—I will call it for short the Finance Act, 1910—and it is provided for by Part IV. of that statute. Section 65 fixes the rate of Income Tax for the year beginning the 6th April, 1909, and Section 66 for the first time imposes Super-tax. By Section 66, paragraph 1, it is provided that "In addition to the income tax charged at the rate of one shilling "and two pence under this Act, there shall be charged, levied, and "paid for the year beginning on the 6th day of April, 1909, in respect "of the income of any individual." I pause there for a moment—"any "individual." Of course the language is very wide, and the contention of the Appellant is that some restriction must obviously be placed upon that language "any individual" The question is what restriction. "In respect of the income of any individual, the total of which from "all sources exceeds five thousand pounds, an additional duty of income "tax (in this Act referred to as a super-tax) at the rate of sixpence "for every pound of the amount by which the total income exceeds "three thousand pounds." Then paragraph 2 of the same section is: "For the purposes of the super-tax, the total income of any individual "from all sources, shall be taken to be the total income of that "individual from all sources for the previous year, estimated in the "same matter as the total income from all sources is estimated for "the purposes of exemptions or abatements under the Income Tax "Acts."

Therefore that Sub-section (2) provides for the manner in which the income is to be arrived at for the purpose of ascertaining the amount on which this additional duty is to be charged. Then the Sub-section goes on:—"but in estimating the income of the previous year for the "purpose of super-tax"—and then there are certain clauses. Clauses (*a*) and (*b*) are not material for the present purpose, but (*c*) provides that: "there shall be deducted in the case of a person in the service of the "Crown abroad any such sum as the Treasury may allow for expenses "which in their opinion are necessarily incidental to the discharge of "the functions of his office, and for which an allowance has not already "been made." I refer to that because that is an indication contained in the Act that it was intended to charge persons abroad as well as persons resident in this country with Super-tax.

Then the next Section dealing with Super-tax is Section 72, and that provides, by Sub-section 1,—"The super-tax shall be assessed and "charged by the Commissioners for the special purposes of the Acts "relating to Income Tax (in this Act referred to as the Special Commis-"sioners)." And then Sub-section (2) is:—"Every person upon whom "notice is served in manner prescribed by regulations under this section "by the Special Commissioners requiring him to make a return of his "total income from all sources or, in the case of a notice served upon "any person who is chargeable with or liable to be assessed to income-tax "under Section forty-one of the Income Tax Act, 1842, or Section "twenty-four of the Customs and Inland Revenue Act, 1890, as repre-"senting an incapacitated, non-resident, or deceased person, of the total

" income from all sources of the incapacitated, non-resident, or deceased " person, shall, whether he is or is not chargeable with the super-tax, " make such a return in the form and within the time required by the " notice."

Now Section 41 of the Income Tax Act, 1842, there referred to extends to persons who are trustees or guardians of any person being an infant, married woman, and so on. The trustee of the will of the testator, Peter Robinson, from whom the Appellant derives her income, is a " person " within Section 41 of the Act of 1842. So that such a person, as representing a non-resident, the Appellant, is required to make a return.

It was urged that such a person would be unable to make a return as he would not know the total income of the person alleged to be liable to Super-tax, but would only know the income that he paid over or so much of the income of which he was a trustee, and therefore it was said that he could not make a return. That seems to me to be not well founded. He obviously can make the return and had to make the return. He has to make the return so far as he is able, so far as the facts are within his knowledge; and although there is a penalty upon a person not making a return, the penalty is only upon any person, under Sub-section (4), who without reasonable excuse fails to make any return, and obviously a trustee can only make a return so far as the facts are within his knowledge and he would have reasonable excuse for not making any further or other return; but so far as he is able, and so far as the facts are within his knowledge, it is his duty to make a return within Sub-section 2. And as he is trustee for a non-resident, that in my judgment forms a clear indication that it was intended that this tax should be imposed upon non-residents.

Then Sub-section (6) of Section 72 provides that " All provisions of " the Income Tax Acts relating to persons who are to be chargeable with " duty, assessments, and appeals against those assessments, and to the " collection and recovery of duty, and to cases to be stated for the opinion " of the High Court shall, so far as they are applicable, apply to the " charge, assessment, collection and recovery of duty under this section." Then Sub-section (7) provides for the time within which an assessment may be made. " The Special Commissioners may amend any assessment " made by them under this section, or make an assessment or an addi- " tional assessment, during any time, within the year of assessment, " or within three years after the expiration thereof." Then by Section 96 (4) it is provided that " Part IV of the Act shall be construed together " with the Income Tax Acts, 1842 and 1853, and any other enactments " relating to Income Tax, and those enactments and Part IV of this Act " are in this Act referred to as the Income Tax Acts." Now Super-tax imposed by this statute is merely an additional Income Tax. That was pointed out in *Bowles* v. *The Attorney General* (1912) 1 Chancery 123,(1) and it is charged in respect of the income of " any individual." The question was considered in the House of Lords in *Colquhoun* v. *Brooks*(2) under the Income Tax Acts, as to the limit to be placed upon the wide language of those Acts. At page 503 of 14 Appeal Cases(3) Lord Herschell dealt with it in this way. He said :—" Reliance was placed " upon the decisions under the Legacy and Succession Duty Acts, which

(1) 5 T.C. 685. (2) 2 T.C. 490.
(3) Colquhoun v. Brooks 2 T.C. 498.

" have imposed a limit upon the broad language of the enactments subject-
" ing legacies and successions to taxation. But it must be remembered
" that it was necessary to put some limit upon these general terms in
" order to bring the matters dealt with within our territorial jurisdiction;
" without such a limitation, the Legacy Duty Act, for example, would
" have been applicable, although neither the testator nor the legatee nor
" the property devised or bequeathed was within or had any relation to
" the British Dominions. A construction leading to this result was
" obviously inadmissible. The Income Tax Acts, however, themselves
" impose a territorial limit; either that from which the taxable income
" is derived must be situate in the United Kingdom or the person whose
" income is to be taxed must be resident there. If the latter condition
" be fulfilled, I think it is competent for the Legislature to determine
" the measure of taxation to be applied in the case of a person
" so resident."

Now in that particular Case there was a person resident in the United Kingdom, but engaged in trade entirely abroad, in respect of which some of the profits of the trade were received in this country; but it will be observed that the limit which was there put is that the taxable income must be derived from property situate within the United Kingdom, or the person whose income is to be taxed must be resident there. Now, I fail to see, after having heard the arguments of the Appellant why there should be any difference with regard to Super-tax from the rest of Income Tax, or what distinction can be drawn between them. It was urged that Super-tax was assessed upon an individual, a person, and that ordinary Income-Tax under Schedules A to E was charged upon property, but not upon a person. But the language is almost identical, as I have pointed out during the course of the argument in several Cases, and where the duty is paid by a firm or a partnership or a company in respect of the gains and profits upon which they are assessed, the company pays the Income Tax as agents for its shareholders, and in that way it is the shareholders, the persons beneficially concerned, who bear the burden of the tax.

Mr. Disturnal argued that it was only with regard to an individual resident here during the year in respect of which the assessment was made that the person could be charged with Super-tax. I pointed out that the statute itself, apart from judicial interpretation of the Income Tax Acts to which I referred, the statute imposing Super-tax also contains the indications to which I have drawn attention, that it is to be charged upon and paid by persons resident abroad as well as by persons resident in this country.

In my opinion, the grounds upon which the learned judge below proceeded are sound, and he arrived at the true construction of the statute. There is one passage in the judgment which I did not entirely follow, a passage at page 71, where he said: " In truth, this contention, " if sound, is applicable in no way specially to non-residents, but would " apparently exempt from Super-tax all income from which Income Tax " was deducted at the source." I think there was a little misconception as to that, because, obviously, where for the purposes of Super-tax the income is to be ascertained in a similar manner to the applications for exemptions and abatements, all income would have to be brought into account, whether taxed at its source or not, and income taxed at its source would not be apparently exempt from Super-tax. But that is

a small matter and, apart from that, I am of opinion that the grounds upon which the learned judge proceeded were well founded, and that no case has been made by the Appellants for escaping from the operations of the statute.

The question is short and simple and, notwithstanding the full argument which I have heard upon it, I cannot bring myself to entertain any doubt but that the Appellant is liable to be assessed and taxed in respect of Super-tax.

Warrington, L.J.—I am of the same opinion. The only question we have to determine is a very short one. The Appellant receives an income the whole of which is derived from property in this country, and is therefore liable to Income Tax. She was not resident in this country during the year for which the assessment in question was made, namely, the year 1911-12.

Is the fact that she was not resident in this country sufficient to excuse her from being liable to Super-tax in respect of the same income as that in respect of which she is liable to Income Tax? That is the only question that we have to determine. There may be other questions under this Act(1) and I desire carefully to limit what I say to the precise question we have to decide. Section 66, on which the question really turns, is, reading it very shortly and leaving out everything that is immaterial, as follows:—"In addition to the income tax charged at "the rate of 1*s.* 2*d.* under this Act, there shall be charged, levied, and "paid for the year in question in respect of the income of any individual, "the total of which from all sources exceeds £5,000, an additional duty "of income tax in this Act referred to as a super-tax."

Now, looking at those words by themselves, what is there that prevents what seems to me, with all respect, to be the obvious construction, that the Super-tax is in addition to the Income Tax which the Act calculates is already paid? As I say, I am confining what I say expressly to the particular case, and, so far, at any rate, as the income which has paid the Income Tax is concerned, I fail to see what there is in the statute to prevent the construction that the word "individual" in that Section means, at all events, the person who has paid the Income Tax in respect of the income in question. Now, that the Act contemplates that mere non-residence shall not excuse a person from the payment of Super-tax I think is shown plainly by Sub-section (*c*) of Sub-section (2) of Section 66, which provides for the deduction in the case of a person in the service of the Crown abroad of certain sums, that is, for the purpose of arriving at the total income from all sources for the purpose of Super-tax in regard to that person. The same point is emphasised by Sub-section (2) of Section 72. A person, for example, who carries on trade in this country, but himself resides abroad, is charged with Income Tax in the name of his agent. That is the expression used in Section 41 of the original Income Tax Act, 1842. He is the person charged with the Income Tax. He plainly is pointed at in Section 72, where there is a reference to persons chargeable or liable to be assessed to Income Tax as representing, amongst other persons, a non-resident person. I do not think there are any other points it is necessary to deal with. For these reasons I think, in this Case, at all events, the Appellant is liable to the Super-tax in respect of her income, being income entirely derived from property in this country. It seems to me, with all respect to the

(1) Finance (1909-10) Act, 1910.

argument, it makes no difference for this purpose whether the Income Tax is deducted at the source, under the operation of what Lord Halsbury calls in the *Ashton Gas Company* v. *The Attorney-General*(1) the somewhat difficult and complex machinery which makes the officers of the company officers of the finance department of the Government for the purpose of collecting the tax, or whether the tax is directly assessed upon the person in question. She pays the tax and in my opinion she is liable to pay Super-tax also.

Scrutton, L.J.—Like my brothers, I desire to limit myself to the exact facts of this Case and to their legal effect, for, like them, I can well understand that other states of facts on this particular Section may raise questions which it will be necessary for the court carefully to consider. The facts here are that a British subject domiciled in England but resident abroad derives all her income exceeding £5,000 a year from property in the United Kingdom, and those being the facts, the question is whether she is liable to Super-tax under Section 66 of the Finance (1909-10) Act, 1910. Now, at the time that Act was passed the liability to Income Tax was, as is summarised by Lord Herschell in the Case of *Colquhoun* v. *Brooks*,(2) a territorial limit; either that from which the taxable income is derived must be situated in the United Kingdom or the person whose income is to be taxed must be resident there. Under these circumstances Parliament passed an Act imposing, in addition to the Income Tax charged, a charge in respect of the income of any individual. Now, it is said that those words are so wide that you must read some limitation. Parliament cannot have meant to tax an individual who never came near England and had no property in England and had nothing whatever to do with England. And the limitation which is suggested by Mr. Disturnal and Mr. Latter is that the term "individual" must be limited to an individual resident within the jurisdiction in the year in respect of which the assessment was made.

Now, it at once strikes me; for what reason should Parliament impose the Super-tax on one half of the Income Tax assessments and not on the other? Why should it impose a Super-tax, on Lord Herschell's expression, on a person who is resident there and omit the tax where that from which the taxable income is derived is situated in the United Kingdom? I can see no reason for imposing an additional duty of Income Tax and leaving out half the subject matter on which the original Income Tax was levied; it would seem far more natural, so far as a person is enjoying the protection of the United Kingdom, either by residing there or by having property there in the protection of the United Kingdom from which he derives income, that in respect of both those sources liable to Income Tax he should, if he derives a sufficient income, also be liable to Super-tax. And, therefore, Mr. Disturnal fails to satisfy me on the facts which I have stated that the lady, not resident in England, but a British subject outside England, deriving all her income from property in the United Kingdom, is not within the words, properly understood, "the "income of any individual", and that conclusion is enough to dispose of this Case. I am rather strengthened in that conclusion when I find that Parliament in two clauses in the same Act contemplated provisions with regard to Super-tax applying to non-residents, in Section 72 (2), and, as to persons in the service of the Crown abroad, in Section 66 (2) (*c*).

(1) 93 L.T. R. 676; (1906) A.C. 10. (2) 2 T.C. 490.

That in my view is enough to dispose of this Case. I quite appreciate that there may arise in future cases difficult questions as to the exact position of a company and its shareholders. I am not at present satisfied that the reasoning in the *King v. Purdie*(1) is consistent with the decision of the House of Lords in the *Ashton Gas Company*(2). It is not necessary in my view of this Case to decide it, because I am quite clear that the company pays as agent of the shareholders, when it pays Income Tax. It may be necessary in future Cases to consider whether, when you look at the restrictions (if any) or limitations to be made in the wide language of Section 66, you may have to limit " income " as well as " individual ", and whether, as in the case of the " individual ", you may confine it to an individual resident, in the case of " income " you may confine it to income arising in the United Kingdom to a person not resident. But it is not necessary in this Case to decide that. I mention it to show that I have not overlooked it, and that I am not to be taken as deciding anything on that question, which does not arise in this Case.

For these reasons I agree that the appeal should be dismissed.

Swinfen Eady, L.J.—The Appeal will be dismissed with costs.

Mr. Parr.—If your Lordship pleases.

(1) 111 L.T. R. 581; (1914) 3 K.B. 112.
(2) 98 L.T. R. 676; (1906) A.C. 10.

VOL. VII.—PART VII.

No. 413.—In the High Court of Justice (King's Bench Division).—1st and 8th July, 1918.

Court of Appeal.—27th and 28th February, and 2nd April, 1919.

House of Lords.—17th May, 1920.

(1) A. W. Williams (Surveyor of Taxes) *v.* W. M. G. Singer and Others.(1)

(2) A. F. Pool (Surveyor of Taxes) *v.* Royal Exchange Assurance.(1)

Income Tax, Schedule D.—Foreign dividends not remitted to United Kingdom.—British trustees of foreign beneficiaries.

In each of these Cases the Respondents, who were resident in the United Kingdom, were trustees under a British trust for a cestui que trust who was resident and domiciled out of the United Kingdom. As trustees they held shares in a foreign company, in the books of which they were registered as the owners of the shares. The dividends on the shares were under mandate of the trustees paid direct to the account of the cestui que trust abroad and no part of the dividends was received in the United Kingdom.

Held, *that the Respondents were not assessable to Income Tax in respect of the dividends arising abroad.*

CASES.

(1)

Stated under the Taxes Management Act, 1880, Section 59, by the Commissioners for the Special Purposes of the Income Tax Acts for the opinion of the King's Bench Division of the High Court of Justice.

1. At a meeting of the Commissioners for the Special Purposes of the Income Tax Acts held on 1st February, 1918, for the purpose of hearing Appeals, Washington Merritt Grant Singer, Sir George Alexander Touche, and John Ferguson (hereinafter called the Respondents), appealed against an assessment of £60,000, in respect of Foreign Possessions and an assessment of £5,000 in respect of Foreign Securities for the year ended 5th April, 1916, made upon them by the Additional Commissioners for the Division of New Sarum, in the County of Wiltshire, under 16 and 17 Vict. cap. 34, Section 2, Schedule D.

2. The greater part of the income in respect of which the assessments are made is derived from shares in a Company, incorporated under American Law, called the Singer Manufacturing Company of New Jersey, and the decision in respect of such income is to govern the liability of the Respondents in respect of all other income from foreign securities and possessions not remitted to the United Kingdom which they hold on the same title as the said shares.

(1) Reported K.B.D. [1918] 2 K.B. 749; C.A. [1919] 2 K.B. 108; and H.L. [1920] n 36 T.L.R. 661.

(31481*—6) Wt. 28949—501 5000 3/21 H. St. G. 2

3. Such shares passed to Mr. Adam M. Singer, Mr. W. M. G. Singer and Mr. James Robertson (all of whom were domiciled and resident in the United Kingdom) under an assignment of the same to them by the Princesse de Polignac contained in an Indenture dated 26th July, 1887 (a copy of which is annexed hereto*) made between Winnaretta Eugenie Singer of the first part, Louis Marie Wilfred Prince de Scey Montbeliard of the second part, Adam Mortimer Singer and Washington Merritt Grant Singer and James Robertson of the third part, being the settlement on the marriage of the Prince and Princess de Scey Montbeliard, subject to the trusts therein expressed. Such trusts were varied by two Indentures dated 13 December, 1893 (copies of which are annexed hereto*) made as to one between Winnaretta Eugenie Singer (formerly the wife of Louis Marie Wilfred Prince de Scey Montbeliard, but who since the dissolution of her marriage with him had resumed her maiden name of Singer) of the first part and Edmond Melchior Jean Marie Prince de Polignac of the second part, Adam Mortimer Singer, Washington Merritt Grant Singer and James Robertson of the third part, being the Settlement on the marriage of the Prince and Princesse de Polignac, and as to the other between Winnaretta Eugenie Singer (formerly the wife of Louis Marie Wilfred Prince de Scey Montbeliard) of the first part, Edmond Melchior Jean Prince de Polignac of the second part, Adam Mortimer Singer and Washington Merritt Grant Singer and James Robertson of the third part, being the Release of Power of Appointment contained in Settlement dated 26 July, 1887. The said shares became vested in Mr. W. M. G. Singer, Sir G. A. Touche and Mr. J. Ferguson (all of whom were and still are domiciled and resident in the United Kingdom) by virtue of an Indenture of 31 July, 1913 (a copy of which is annexed hereto*) made between Winnaretta Eugenie Princesse Edmond de Polignac of the first part, Adam Mortimer Singer of the second part, Washington Merritt Grant Singer of the third part and George Alexander Touche and John Ferguson of the fourth part, being an appointment of new trustees, subject to the trusts created by the Indenture of 26th July, 1887, and to the two Indentures dated 13th December, 1893.

4. The said Mr. W. M. G. Singer, Sir G. A. Touche and Mr. John Ferguson are registered in the books of the Singer Manufacturing Company of New Jersey as, and are in law, the owners of the shares.

5. The said Mr. W. M. G. Singer, Sir G. A. Touche, and Mr. John Ferguson have given a mandate and instructions to the Bank of British North America, New York, to collect and receive the dividends of the aforesaid shares in the Singer Manufacturing Company of New Jersey and to credit them to the account of Princesse de Polignac at the said bank in New York. No part of the said dividends have at any relevant time been remitted to or received in the United Kingdom.

6. From other investments which the Respondents hold in like manner they receive dividends and interest in the United Kingdom, but in respect of such income no question arises, as the assessments under appeal relate solely and exclusively to income not received in the United Kingdom.

7. The said Princesse de Polignac did not, during the year of assessment, possess any place of residence in the United Kingdom, nor was she ever, during such year, in the United Kingdom. She is a French

* Omitted from the present print.

subject, and she is not domiciled in the United Kingdom. It was not contended that she was resident in the United Kingdom at any relevant time.

8. Counsel for the Respondents claimed to have the assessments under appeal discharged on the following grounds :—

(*a*) It is admitted that, prior to 1914, the income assessed, not having been received in the United Kingdom, was not liable to assessment. Liability is sought to be established under Section 5 of the Finance Act, 1914, and it is only under this Section that liability can possibly exist.

(*b*) Notwithstanding the said Section 5 it is still necessary to refer to Section 2 of the Income Tax Act, 1853, in order to ascertain what income is liable to taxation. Under that Section liability extends (1) to annual profits or gains arising or accruing to any person residing in the United Kingdom, and (2) to annual profits or gains arising or accruing to any person although not resident in the United Kingdom from any property whatever in the United Kingdom.

(*c*) The income assessed in this instance is not the income of any person residing in the United Kingdom nor does it arise from property in the United Kingdom.

(*d*) Under Section 2 of 5 and 6 Vict. cap. 80 and Section 10 of the Income Tax Act, 1853, the Crown does not seek to levy Income Tax on Foreign Dividends which, although actually payable in the United Kingdom by paying agents resident in the United Kingdom, are in fact the income of, and are remitted to, persons not so resident. If when the moneys actually are received in the United Kingdom and sent out of it again non-liability is admitted, still more should it be admitted where moneys do not reach the United Kingdom at all.

(*e*) Apart from the foregoing contentions Section 5 provides that, in computing the amount of liability, a deduction shall be made for any annual payment payable out of the income to a person not resident in the United Kingdom. In this instance the Princess, who is not resident in the United Kingdom, is entitled to the whole of the income for life, and is entitled to dispose of the property by will or codicil, being in the position of an absolute owner who could if so desirous put an end to the trust altogether.

(*f*) By its proviso, Section 5 is not applicable to a person who satisfies the Commissioners of Inland Revenue that he is not domiciled in the United Kingdom, and it is admitted by the Crown that the Princess is not so domiciled.

(*g*) Sections 41, 42, and 53 of the Income Tax Act, 1842, and other Sections in later Acts all show that the tax is intended to be levied on the person who actually enjoys the income, the sections themselves not being charging sections, but merely machinery by which to give effect to the intention of the charging sections. The Princess not being domiciled in the United Kingdom and the moneys not being received in the United Kingdom no liability would exist even though she resided in the United Kingdom. The mere fact that the trustees through whom the moneys reach the Princess are

resident in the United Kingdom does not create liability. Their liability is not greater than the liability of the Princess would be if she were resident in the United Kingdom.

9. Counsel for the Surveyor of Taxes resisted the claim to exemption put forward on behalf of the Respondents, contending *inter alia*:—

(*a*) That the Respondents, being the legal owners of the said shares and entitled to receive the profits and gains arising or accruing therefrom, and being domiciled and resident in the United Kingdom, are assessable to Income Tax in respect of such profits and gains under the provisions of Section 5 of the Finance Act, 1914.

(*b*) That the proviso in that Section does not apply, inasmuch as the person therein referred to can only be the person assessed, or liable to assessment.

(*c*) That the Princess is not a person entitled to an "annual payment payable out of the income."

10. The following Cases were referred to by Counsel during the hearing:—

Hill v. *Gregory* [1912] 2 K.B. 61; 6 T.C. 39.

Fry (*Surveyor of Taxes*) v. *Shiels' Trustees* [1915] S.C. 159; 6 T.C. 583.

Rex v. *Commissioners of Taxes for the Newmarket Division of Suffolk and the Copthorne Division of Surrey* [1916] 1 K.B. 788; 7 T.C. 49.

Marion Brooke (*formerly Marion Price*) v. *The Commissioners of Inland Revenue*.(1)

11. At the conclusion of the hearing of the Appeal there was a division of opinion among us, one of our number considering that, subject to any necessary adjustment of figures, the assessment should be confirmed. The remaining two were of the contrary opinion, holding, for the following reasons, that the liability of the Respondents, being trustees, is neither greater nor less than the liability of the Princess would be if she were resident in the United Kingdom.

In reply to a question put by us at the hearing, Counsel for the Surveyor of Taxes admitted that the Respondents have no interest whatever in the income assessed other than such as arises from the fact that they are trustees, who hold the legal estate, and receive and distribute the said income under and in accordance with the trust deed. This being so we were of opinion that the mere omission on the face of the assessment sheets of words explicitly stating that the Respondents are trustees did not in any way affect the question to be determined by us, that question being the same as it would have been had the description of the person assessed as set out on the assessment sheets included words denoting that the Respondents are in fact trustees, viz., whether legal ownership by trustees can render them liable to a greater extent than the liability of the person actually enjoying the trust income.

We had then to consider the effect of the following enactments:—

As to foreign securities and possessions,

Section 100, Schedule D., Cases 4 and 5 of the Income Tax Act, 1842, and Section 5 of the Finance Act, 1914,

(1) 7 T.C. 261.

As bearing on the liability of trustees;—

Sections 41, 42, and 53 of the Income Tax Act, 1842, Section 71 (2) of the Finance (1909-10) Act, 1910, and Section 13 of the Revenue Act, 1911.

By Section 100, Schedule D, Cases 4 and 5 of the Income Tax Act, 1842, income from foreign securities and foreign possessions was made liable to Income Tax only in so far as it was received in the United Kingdom, but Section 5 of the Finance Act, 1914, enacted—

"Income Tax in respect of income arising from securities, stocks, "shares, or rents in any place out of the United Kingdom shall, notwithstanding anything in the rules under the fourth and fifth case in "section one hundred of the Income Tax Act, 1842, be computed on "the full amount of the income, whether the income has been or will be "received in the United Kingdom or not, subject in the case of income "not received in the United Kingdom to the same deductions and "allowances as if it had been so received and to the deduction (where "such a deduction cannot be made under any other provision of the "Income Tax Acts) of any sum which shall have been paid in respect "of Income Tax in the place where the income shall have arisen, and to a "deduction on account of any annual interest or any annuity or other "annual payment payable out of the income to a person not resident in "the United Kingdom. . . . . "

"Provided that this section shall not apply in the case of a person "who satisfies the Commissioners of Inland Revenue that he is not "domiciled in the United Kingdom, or that, being a British subject, he "is not ordinarily resident in the United Kingdom."

Section 41 of the Income Tax Act, 1842 (as amended by Section 5 of the Income Tax Act, 1853)—omitting certain words not bearing directly on the point now under consideration—enacts that "the trustee, "guardian, tutor, curator or committee of any person, being an infant, "or married woman, lunatic, idiot, or insane, and having the direction, "control, or management of the property . . . . of such . . . . "married woman . . . . whether such . . . . married "woman . . . . shall reside in the United Kingdom or not, shall "be chargeable to the said duties in like manner and to the same "amount as would be charged if such . . . . married woman "were sole . . . . . "; and the latter part of the Section dealing specially with persons not resident in the United Kingdom enacts that "any person not resident in the United Kingdom, whether a subject "of her Majesty or not, shall be chargeable in the name of such trustee "guardian . . . . having the receipt of any profits or gains arising as "herein mentioned, and belonging to such person, in the like manner "and to the like amount as would be charged if such person were resident in the United Kingdom, and in the actual receipt thereof; and "every such trustee . . . . shall be answerable for the doing of "all such acts . . . . as shall be required to be done by virtue of "this Act in order to the assessing of any such person. . . . . "

This Section expressly limits the liability of trustees to that of the *cestui que trust*. The view that it is merely a machinery Section for bringing home the charge under the Acts to the *cestui que trust* is confirmed by opinions expressed in the Cases of—

Tischler and Company v. *Apthorpe* ([1885] 52 L.T. 814; 33 W.R. 548; 49 J.P. 372; 2 T.C. 89), and *Rex* v. *Commissioners of Taxes for the Divisions of Newmarket, Suffolk and Copthorne, Surrey.* (K.B.D. and C.A. [1916] 1 K.B. 788; 7 T.C. 49).

Section 42 of the Income Tax Act, 1842, is as follows :—

"Provided always that no trustee who shall have authorised the "receipt of the profits arising from trust property by the person entitled "thereunto, or by the agent of such last-mentioned person, and which "person shall actually receive the same under such authority . . . . "who shall return a list in the manner hereinafter required of the name "and residence of such person, shall be required to do any other act for "the purpose of assessing such person. . . ."

The enactment that no liability to assessment at all shall attach to trustees who shall authorise the receipt of the profits arising from trust property by the person entitled thereunto, or by the agent of such last-mentioned person, appears to us wholly inconsistent with the supposition that the liability of a trustee may be greater than the liability of a sole beneficiary in possession resident in the United Kingdom as, if such had been the intention of Parliament, it is, to say the least, improbable that a Section would have been inserted providing an easy means of evading the larger liability.

The next Section of the 1842 Act to be considered is Section 53. This Section enacts :—

(1) that in the making of Income Tax assessments the liability of a trustee on his own account is to be kept separate and distinct from his liability as trustee, and

(2) that where two or more trustees shall be liable to be charged for the same person, one return only shall be required, and one assessment only shall be made.

From these two provisions we infer that the liability of *cestuis que trust* resident in the United Kingdom is the real object borne in mind, and not the liability of the persons in whom the legal estate of trust funds is vested as distinct from the liability of the *cestuis que trust*.

The next point that arises for consideration is whether such an inference is in conflict with the provisions of Section 71 (2) of the Finance (1909-10) Act, 1910, as amended by Section 13 of the Revenue Act, 1911.

Section 71 (2) of the Finance (1909-10) Act, 1910, is an exempting Section, applicable only to persons *not* resident in the United Kingdom. If we are correct in holding that the liability of trustees is not less than the liability of a *cestui que trust* who *is* resident in the United Kingdom it is clear that, if the Respondents, as trustees, were in receipt of income of the class with which the Section deals, they could not claim exemption under its provisions and the Section is not in conflict with the aforesaid inference.

Section 13 of the Revenue Act, 1911, was in our opinion intended to give relief to certain *cestuis que trust* who, although *not* resident in the United Kingdom, were still outside the exemption granted by the aforesaid Section 71 (2).

Assuming—

(1) That a trustee is liable to assessment, and

(2) That such liability extends as far as the liability of a *cestui que trust* resident in the United Kingdom, it follows that, in order to entitle a non-resident *cestui que trust* to the intended exemption, one or both of the above two barriers to the attainment of that object must be removed. This is precisely what Section 13 does—it enacts that, in so far as it applies, there shall be no liability on the part of the trustee

Again as Schedule D, Section 100, of the Income Tax Act, 1842, enacts "The said . . . duties . . . shall be charged annually on and paid by the persons . . . receiving or entitled unto the same," and the aforesaid Section 13, by enacting only that the beneficiary in possession there dealt with shall be deemed to be the person owning the securities for the purpose of the aforesaid Section 71, treats beneficiaries as persons "receiving or entitled to the income", notwithstanding the fact that the legal estate is not vested in such persons, the view that liability to charge necessarily follows ownership of the legal estate apart from beneficiary rights appears to us unwarranted.

In our opinion the underlying idea in every Section dealing with trustees is to secure payment to the Revenue of such sums as the persons actually enjoying the income of the trust property may be liable to pay.

12. Pursuant to the opinion of the majority of our number we discharged the assessments.

13. The Appellant immediately upon the determination of the Appeal declared to us his dissatisfaction therewith as being erroneous in point of law, and in due course required us to state a Case for the opinion of the High Court pursuant to the Taxes Management Act, 1880, Section 59, which Case we have stated, and do sign accordingly.

G. F. HOWE,
W. J. BRAITHWAITE,
P. WILLIAMSON,
} Commissioners for the Special Purposes of the Income Tax Acts.

Windsor House,
83, Kingsway,
London, W.C.2.
28th May, 1918.

---

(2)

STATED under 43 & 44 Vict. Ch. 19, Sec. 59 (1) by the Commissioners for the Special Purposes of the Income Tax Acts for the opinion of the King's Bench Division of the High Court of Justice.

---

1. At a Meeting of the Commissioners for the Special Purposes of the Income Tax Acts, held at York House, Kingsway, London, W.C., on 24th November, 1916, for the purpose of hearing Appeals, the Royal Exchange Assurance (hereinafter called the Respondents) appealed against an assessment of £2,015 for the year ended 5th April, 1915, and an assessment of £2,018 for the year ended 5th April, 1916, made upon them "as Trustees under Will of J. P. Mellor (deceased) for beneficiary "Mrs. H. P. Munthe" by the District Commissioners of Taxes for the City of London under 16 & 17 Vict. Cap. 34, Sec. 2, Schedule D, in respect of foreign possessions. (Copies of the said assessments and of the notice of appeal are annexed and form part of this Case.)*

* Omitted from the present print.

2. At the hearing of the Appeal, an affidavit made by Mrs. H. P. Munthe in Italy, to the effect that her husband was and is a Swedish subject, and that she is not, and has not since her marriage been, domiciled in the United Kingdom, was exhibited to us, together with a certified extract from the Marriage Register of Paddington Parish Church, proving Mrs. Munthe's marriage there on 16th May, 1907; and the following facts were proved to our satisfaction :—

(*a*) That the profits from foreign possessions in respect of which the assessments under appeal have been made arise from American securities, stocks and shares which have been set aside and appropriated under the said Will as part of the share in which Mrs. Munthe is interested.

(*b*) That the Respondents, a body incorporated under the laws of England carrying on and having its chief place of business in London, hold, together with their co-trustee hereinafter mentioned, the said securities, stocks and shares as trustees under a trust created by the Will of Mrs. H. P. Munthe's father, the late Mr. J. P. Mellor. Their duties in relation thereto are such as arise under the terms of the said Will. By the said Will Mr. William Lockett Agnew and the Respondents were appointed Trustees, and both are acting, but it is agreed between the parties that the assessments under appeal shall not be impeached on the ground that Mr. Agnew's name is omitted. In the Will the testator refers to the two trustees as " my trustees "—they are directed to divide the residue of the estate into two equal parts and to " stand possessed of (one) moiety . . . . for the " benefit of my daughter Hilda Pennington Mellor " and to " pay the income of the investments thereof " to her during her life, with remainder to her children, subject to the limitations and conditions appearing in the Will.

(*c*) That Mrs. H. P. Munthe is the said daughter, and is sole beneficiary in possession of the said income.

(*d*) That Trustees keep all the securities, stocks, and shares the subject of the trusts of the said Will in England in the vaults of their bankers in London. As regards such securities, stocks and shares as are held by the Trustees as representing the moiety in which Mrs. H. P. Munthe is interested so far as they are American securities, stocks, and shares, the coupons, dividend warrants, &c., necessary for collecting the profits arising therefrom are sent by the said bankers in London of the trustees to the New York office of the Respondents who collect such profit on behalf of the trustees. Such profits, the subject of the assessments in questio having been so received by the Respondents in America, a paid over to Mrs. H. P. Munthe's bankers in America, an have not, nor has any part thereof, been received in th United Kingdom.

(*e*) That Mrs. H. P. Munthe does not reside in the United Kingdon

(*f*) That the assessments appealed against were not made on th Royal Exchange Assurance simply, but on the Roy Exchange Assurance as trustees for Mrs. H. P. Munthe.

Page Cut

3. A copy of the said Will is annexed and forms part of this Case.*

4. On the foregoing facts and the several statutory enactments relating to trustees and to income arising from foreign securities and possessions, it was contended on behalf of the Respondents :

(*a*) That the Sections in the Act of 1842 authorising the assessment of trustees are machinery only, and that their liability as trustees is not greater than the liability of Mrs. H. P. Munthe would be if she were resident in the United Kingdom and in the actual receipt of the income forming the subject of assessment.

(*b*) That the said income, not having been received in the United Kingdom, no liability to assessment could arise unless under Section 5 of Finance Act, 1914.

(*c*) That in this case no liability exists under that Section, as Mrs. H. P. Munthe is not domiciled in the United Kingdom.

(*d*) That the Respondents as trustees are therefore not liable to assessment and that the assessments made upon them should be discharged.

5. On behalf of the Revenue it was contended that, inasmuch as the Respondents are the owners in law of the said securities, stocks, and shares, and the income arising therefrom is received by them, they are correctly assessed and are liable to pay the duty charged by the said assessments.

6. Having at the hearing of the appeal held over our decision, we subsequently considered the effect of the following enactments :—

(*a*) As to foreign securities and possessions—Sec. 100, Schedule D, Cases 4 and 5 of the Income Tax Act, 1842, and Sec. 5 of the Finance Act, 1914.

(*b*) As bearing on the liability of trustees :—

Sections 41, 42 and 53 of the Income Tax Act, 1842.

Section 71 (2) of the Finance (1909-10) Act, 1910, and Section 13 of the Revenue Act, 1911.

and have arrived at the conclusions hereinafter set out.

(*a*) By Section 100, Schedule D, Cases 4 and 5 of the Income Tax Act, 1842, income from foreign securities and foreign possessions was made liable to Income Tax only in so far as it was received in the United Kingdom, but Section 5 of the Finance Act, 1914, enacted :—" Income Tax in respect of " income arising from securities, stocks, shares, or rents in " any place out of the United Kingdom shall, notwithstanding anything in the rules under the fourth and fifth case " in section one hundred of the Income Tax Act, 1842, be " computed on the full amount of the income, whether the " income has been or will be received in the United " Kingdom or not . . . . . "

" Provided that this section shall not apply in the case of " a person who satisfies the Commissioners of Inland Revenue

* Omitted from the present print.

" that he is not domiciled in the United Kingdom, or that, " being a British subject, he is not ordinarily resident in the " United Kingdom."

(*b*) Section 41 of the Income Tax Act, 1842 (as amended by Section 5 of the Income Tax Act, 1853) enacts—omitting certain words not directly applicable to this Case—that " the trustee, " guardian, tutor, curator or committee of any person, being " an infant, or married woman, lunatic, idiot, or insane and " having the direction, control or management of the " property . . . of such . . . married woman " . . . . whether such . . . married woman . . . " shall reside in the United Kingdom or not, shall be charge- " able to the said duties in like manner and to the same " amount as would be charged if such . . . married " woman were sole . . . " ; and the latter part of the section dealing specially with persons not resident in the United Kingdom enacts that " any person not resident in the " United Kingdom whether a subject of her Majesty or not, " shall be chargeable in the name of such trustee . . . " having the receipt of any profits or gains arising as herein " mentioned, and belonging to such person, in the like " manner and to the like amount as would be charged if such " person were resident in the United Kingdom, and in the " actual receipt thereof; and every such trustee . . . " shall be answerable for the doing of all such acts . . . " as shall be required to be done by virtue of this Act in " order to the assessing of any such person . . . . . "

This Section expressly limits the liability of trustees in the manner contended for by the Respondents.

Section 42 of the Income Tax Act, 1842, is as follows :—

" Provided always that no trustee who shall have authorised the " receipt of the profits arising from trust property by the person " entitled thereunto, or by the agent of such last-mentioned person, " and which person shall actually receive the same under such " authority . . . who shall return a list in the manner herein- " after required of the name and residence of such person, shall be " required to do any other act for the purpose of assessing such " person . . . "

The enactment that no liability to assessment at all shall attach to trustees who shall authorise the receipt of the profits arising from trust property by the person entitled thereunto, or by the agent of such last-mentioned person, appears to us wholly inconsistent with the supposition that the liability of a trustee may be greater than the liability of a sole beneficiary in possession resident in the United Kingdom, as, if such had been the intention of Parliament, it is, to say the least, improbable that a Section would have been inserted providing an easy means of evading the larger liability.

The next Section of the 1842 Act to be considered is Section 53. This Section enacts :—

(1) that in the making of Income Tax assessments the liability of a trustee on his own account is to be kept separate and distinct from his liability as trustee, and

(2) that where two or more trustees shall be liable to be charged for the same person, one return only shall be required, and one assessment only shall be made.

From these two provisions we infer that the liability of *cestuis que trust* resident in the United Kingdom is the real object borne in mind, and not the liability of trustees as distinct from the liability of the *cestuis que trust*.

The next point that arises for consideration is whether the contention put forward by the Respondents is in conflict with the provisions of Section 71 (2) of the Finance (1909-10) Act, 1910, as amended by Section 13 of the Revenue Act, 1911.

Section 71 (2) of the Finance (1909-10) Act, 1910, is an exempting Section, applicable only to persons *not* resident in the United Kingdom. As the Respondents admit that their liability as trustees is not less than the liability of a *cestui que trust* who *is* resident in the United Kingdom it is clear that if they were in receipt, as trustees, of income of the class with which the Section deals, the acceptance of their contention would not entitle them to claim exemption under its provisions, and that the Section contains nothing that conflicts with the said contention.

Section 13 of the Revenue Act, 1911, was in our opinion intended to give relief to certain *cestuis que trust* who, although *not* resident in the United Kingdom, were still outside the exemption granted by the aforesaid Section 71 (2). From the contention of the Respondents, admitting as it does the two points,—

(1) That a trustee is liable to assessment, and

(2) That such liability extends as far as the liability of a *cestui que trust* resident in the United Kingdom,

it follows that, in order to entitle a non-resident *cestui que trust* to the intended exemption, one or both of the above two barriers to the attainment of that object must be removed. This is precisely what Section 13 does—it enacts that, in so far as it applies, there shall be no liability on the part of the trustee. There is nothing in this that militates against the contention of the Respondents.

In our opinion the underlying idea in every Section dealing with trustees is to secure payment to the Revenue of such sums as the persons actually enjoying the income of the trust property may be liable to pay.

Lastly, we considered the contention of the Appellant as set out in paragraph 5 hereof. As to this, we were of opinion that as the assessments appealed against are made upon the Respondents as trustees, the question of whether or not they are liable otherwise than as trustees did not arise for determination by us.

7. On 19th December, 1916, we informed the Respondents that we would discharge the assessments on production of a certificate from the Commissioners of Inland Revenue or other conclusive evidence that those Commissioners were satisfied that Mrs. H. P. Munthe was not domiciled in the United Kingdom.

8. The Respondents having obtained from the Commissioners of Inland Revenue a certificate to the required effect we discharged the assessments on 6th February, 1917.

9. The Appellant immediately upon the determination of the Appeal gave notice of dissatisfaction with our decision as being erroneous in

point of law and in due course required us to state a Case for the opinion of the High Court pursuant to 43 & 44 Vict. ch. 19 sec. 59 (1) which Case we have stated and do sign accordingly.

G. F. HOWE. } Commissioners for the
MARK STURGIS. } Special Purposes of the Income Tax Acts.

York House,
Kingsway,
London, W.C.2.
9th July, 1917.

The Cases were argued on the 1st July, 1918, before Mr. Justice Sankey, when the Solicitor-General (Sir Gordon Hewart, K.C., M.P.) and Mr. T. H. Parr appeared as Counsel for the Appellants, and Mr. Disturnal, K.C., and Mr. A. M. Latter for the Respondents. Judgment was delivered on the 8th July, 1918, against the Crown, with costs.

JUDGMENT.

Sankey, J.—This is a Case stated under Section 59 of the Taxes Management Act by the Commissioners for the Special Purposes of the Income Tax Acts for the opinion of this Court, and raises the question whether certain gentlemen who reside in England and who are the trustees of a French subject, who is not domiciled in the United Kingdom, can be made liable to English Income Tax in respect of dividends on shares of an American company, which dividends are never remitted to the trustees in England, but are sent direct from America to the French subject.

The facts are as follows:—The income in question is derived from shares in a company incorporated under American law called the Singer Manufacturing Company of New York. The Respondents are trustees of the Princesse de Polignac as stated in paragraph 3 of the Case. They are registered in the books of the Singer Company as, and they are in law, the owners of the shares. They gave instructions to the Bank of British North America, in New York, to collect and receive the dividends on the shares and to credit them to the account of the Princesse at the said bank in New York.

No part of the dividends has at any time been remitted to or received in the United Kingdom. The Princesse did not during the year of assessment possess any place of residence in the United Kingdom, nor was she during such year in the United Kingdom. She is a French subject and is not domiciled in the United Kingdom.

The Surveyor of Taxes contended that the Respondents being legal owners of the shares and entitled to receive the profits and gains arising or accruing therefrom and, being domiciled and resident in the United Kingdom, are assessable to Income Tax in respect of such profits and gains under the provisions of Section 5 of the Finance Act, 1914.

The Commissioners decided against the contention of the Surveyor and the Crown appeal from that decision in the present Case. The Solicitor-General, who appeared for the Appellants, stated the point at issue very concisely when he said that the question is whether the liability for tax on investments held by British trustees resident in the United Kingdom on behalf of a non-resident *cestui que trust*, where such proceeds are never remitted to the United Kingdom, is to be determined by the domicil of the trustees or by that of the *cestui que trust*.

A very large number of Sections in a very large number of taxing Acts and a great number of Cases were referred to, and I must be allowed to confess that I appreciate the position of those persons who "found no end in wandering mazes lost".

I will, however, endeavour to state as clearly as I can the principles which appear to me to apply to the present circumstances. The Income Tax Acts of 1842 and 1853 are, amongst a number of other matters, directed to two main points:—

(1) The class of persons to be taxed;

(2) The class of property to be taxed.

These classes being defined, there are innumerable machinery Sections which regulate the working out of the assessments

The Solicitor-General drew my attention to the charging Sections, and, referring to the Case of *Rex* v. *Newmarket Commissioners*(1) ([1916] 1 K.B. 788), argued that these Sections are extremely wide and cover the cases of trustees like the present ones who are the legal owners of the property and are domiciled in England.

The learned Counsel for the Respondents on the other hand contended that persons in the position of the present trustees had never been assessed in like circumstances and that nobody would have thought of assessing them before Section 5 of the Act of 1914 was passed; that liability was sought to be established under that Section, and it was only under that Section that liability could exist, but that when properly considered the Section did not apply.

In my view, it is important to bear in mind the difference between the class of persons who are assessable and the class of income which is assessable. The charging Section is Section 100 of the 1842 Act, and by its 4th and 5th Cases provides (in respect of Schedule D) for the computation of duty from foreign securities and foreign possessions, and Schedule D in the 1853 Act provides for duties: "For and in respect "of the annual profits or gains arising or accruing to any person what-"ever, whether a subject of Her Majesty or not, although not resident "within the United Kingdom, from any property whatever in the United "Kingdom, or any profession, trade, employment, or vocation exercised "within the United Kingdom and to be charged for every twenty shillings "of the annual amount of such profits and gains."

It will be observed therefore that the Schedule contemplates—

(1) the payment of Income Tax by persons, whether subjects of His Majesty or not, although not resident in the United Kingdom, and

(2) the payment of the tax in respect of sums received from foreign securities or possessions remitted to this country.

(1) 7 T.C. 49.

Section 41 of the 1842 Act, which is a machinery Section, provides that non-residents are to be charged in the name of their trustee or agent.

It seems clear that non-residents could only be made amenable to the English Income Tax if they could be brought within the ambit of those Sections, and, in my opinion, up to 1914, before a non-resident in the position of the Princesse in this Case could be made liable—

(1) he must have had a trustee in England,

(2) the sums received from the securities or possessions must have been remitted to England,

in which event the trustee would have been assessed and liability really imposed through him.

It was then urged by the Crown that Section 5 of the Finance Act, 1914, had altered this position by providing in effect that dividends earned abroad were liable to the English Income Tax whether they were remitted to England or not, and it was contended that the present trustees had been rightly assessed.

The distinction, however, between the classes of persons assessable and the classes of property assessable must still be borne in mind and I am of opinion that Section 5 enlarges the classes of property but does not enlarge the classes of persons liable.

It will be observed that the Section itself starts by saying that Income Tax in respect of "income" arising in any place out of the United Kingdom shall, notwithstanding anything in the Rules under the 4th and 5th Cases in Section 100 of the Income Tax Act, 1842, be computed on the full amount of the income whether the income has been received in the United Kingdom or not. The 4th and 5th Cases refer to property to be charged, as distinguished from persons to be charged, and in like manner I think Section 5 refers to property and not to persons.

Although it is true to say that persons are charged to the Income Tax, it is equally true to say that they are charged because they have property. It is the profits which have to pay—*see* Lord Salvesen in *Crookston Brothers* v. *Furtado* (5 T.C. 602), where, referring to Section 41 of the Act of 1842, he says: "The intention of the Statute is not to make "the agent personally liable for the Income Tax due by the foreign firm, "but only to make him so liable when he has the opportunity of recouping "himself out of moneys belonging to the foreign firm". In my opinion, it is not possible to make a trustee liable for Income Tax to be paid out of the moneys of the *cestui que trust* when the *cestui que trust* is himself not liable. The machinery of Section 41 is machinery by which, through a trustee, a person who is liable for Income Tax can be reached. The residence of a trustee is not visited upon the *cestui que trust* so as to make the latter liable for Income Tax when he would not otherwise be so liable.

In my opinion, trustees in the position of the present ones were neither before, nor have they been since, the Act of 1914 liable to pay Income Tax under such circumstances.

In the result the Commissioners were right, and this Appeal must be dismissed with costs.

The second Case, *Pool* v. *The Royal Exchange Assurance*, follows the Case that I have just referred to, and the result is the same in that Case.

Mr. Disturnal.—In each Case, My Lord, the Appeal will be dismissed with costs?

Sankey, J.—Yes.

The Crown having appealed, the Cases came on for hearing before the Master of the Rolls, and Warrington and Scrutton, L.JJ., on the 27th and 28th March, 1919. The Attorney-General (Sir Gordon Hewart, K.C., M.P.) and Mr. T. H. Parr appeared for the Appellants, and Mr. Disturnal, K.C., Mr. A. M. Bremner, and Mr. A. M. Latter on behalf of the Respondents.

On the 2nd April, 1919, judgment was unanimously delivered against the Crown, affirming the decision of the Court below.

JUDGMENT.

The Master of the Rolls.—These two appeals raise the same question, as to the liability of the Respondents, who are trustees, to be assessed to Income Tax. In the one Case the parties assessed are trustees, but the assessment is made upon them individually without reference to any trust. In the other Case, the Royal Exchange Assurance are assessed "as trustees for Mrs. H. P. Munthe". In my view, this difference is unimportant.

In each Case the income is derived from foreign securities or possessions, and no part of it has been or will be received in the United Kingdom. It arises abroad and is paid to or credited to the account of the beneficiary abroad. In each Case the beneficiary is a foreign subject not domiciled or resident in the United Kingdom. The trustees, however, in each Case are domiciled and resident in the United Kingdom.

The question for decision is whether the liability to Income Tax is to be determined by the domicil of the trustees or by that of the *cestuis que trust*.

The Commissioners for Special Purposes of the Income Tax Acts decided that the liability to Income Tax was determined by the domicil of the beneficiary and they discharged the assessments. Mr. Justice Sankey took the same view and dismissed the appeals by the Surveyors who now appeal to this Court. Previous to the passing of the Finance Act, 1914, no Income Tax would have been payable on the income in question, as no part of it was actually received in Great Britain. The question turns upon the true construction of Section 5 of the Finance Act, 1914, which imposes Income Tax on the income "arising from "securities, stocks, shares, or rents in any place out of the United King-"dom" whether the income has been or will be received in the United Kingdom or not. The Section, however, contains the following proviso: "Provided that this Section shall not apply in the case of a person who "satisfies the Commissioners of Inland Revenue that he is not domiciled "in the United Kingdom, or that being a British subject he is not

" ordinarily resident in the United Kingdom." It is beyond dispute that, if the respective beneficiaries entitled to this income were here, they could not be assessed to Income Tax in respect of this income, no part of which reaches the United Kingdom.

The contention on behalf of the Surveyor of Taxes is, that the Income Tax Acts have regard only to the legal owners of property and disregard the persons equitably or beneficially entitled, and that, if the legal owners are domiciled here, it is immaterial that they are merely trustees for persons not domiciled here. On the other hand, the Respondents insist that the notion that for purposes of Income Tax the Commissioners look only to the legal owner is wholly unfounded. Section 5 of the Finance Act, 1914, provides for the taxation of income from foreign property, but does not contain any particulars of the person to be charged. It is necessary to consider the previous Income Tax Acts to determine this question. The charging Section is Section 2 of the Act of 1853, Schedule D: " For and in respect of the annual profits or gains " arising or accruing *to any person* residing in the United Kingdom from " any kind of property whatever whether situate in the United Kingdom " or elsewhere."

The contention on behalf of the Crown is that a trustee for a foreigner domiciled abroad, is a " person " within this Schedule D and has to be assessed as well in respect of his own property as in respect of property held as trustee for others, without reference to the trust. If this be so, Super-tax will have to be assessed in the same way, and the larger the aggregate income, the higher the rate of Super-tax, up to the maximum limit. Thus a *cestui que trust* of limited means would suffer by having a wealthy trustee. Nor can it be urged that this is merely form, and that the *cestui que trust* can obtain such exemption, relief, or abatement as the nature of the case may require under Section 6 (3) of the Finance Act, 1914; as by Section 71 (1) of the Finance (1909-10) Act, 1910, no exemption, abatement, or relief under the Income Tax Act, which depends on the total income of an individual from all sources, shall be given to any person, unless the person claiming the exemption, abatement, or relief is resident in the United Kingdom.

Again, it is not true to say that the Income Tax Acts look only to the legal owners, as they contain references to persons who *pay* Income Tax either by way of deduction or otherwise. A person who pays Income Tax by deduction is a taxpayer. *Marion Brooke* v. *Inland Revenue Commissioners*(1) ([1918], 1 K.B. 257).

The case of *Colquhoun* v. *Brooks*(2) (14 A.C. 493), established that, notwithstanding the wide language of the charging Sections of the Income Tax Acts, it is open to the subject to show that, having regard to the machinery of the Act for assessing and collecting, the language was not intended to bear the widest meaning so as to operate unreasonably in the case of foreigners. Section 41 of the Act of 1842 provides for the trustees and guardians of certain incapacitated persons being chargeable to the duties imposed in like manner and to the same amount as would be charged if such persons were capable of acting for themselves. This is merely machinery for the purpose of collecting the duty. It was argued for the Crown that this Section did not extend to a case

(1) 7 T.C. 261.

(2) 2 T.C. 490.

in which a trustee was legal owner, and was merely inserted in the Statute to include cases where a trustee, not being legal owner, nevertheless had " the direction, control or management ". This contention, however, is not well founded. A trustee for a married woman is a person who is usually the legal owner of the property to which the married woman is beneficially entitled. I am of opinion that the view expressed by Mr. Justice Sankey was well founded, and that Section 41 is mere machinery by which a person who is liable for Income Tax can be reached through the trustee or other persons mentioned in the Section. The residence of the trustee is not a determining factor to render liable to Income Tax a person who would not otherwise be liable, or through the medium of a trustee to render income liable to tax which would not be so liable in the hands of the beneficiary himself. The income in question does not in my opinion fall within " annual profits or gains " accruing to any person residing in the United Kingdom " within the meaning of Schedule D. This income accrues to a foreigner residing abroad, and the fact that there are English trustees residing here does not bring this income into charge.

Take the converse case of income arising from property abroad, remitted by a foreign trustee to a beneficiary resident here. Such a beneficiary would certainly be liable to be taxed here on the income received in the United Kingdom, and could not escape from payment upon the ground that the profits or gains did not " arise or accrue to any person residing " in the United Kingdom ", but arose or accrued to the trustee residing abroad, who was the legal owner of the foreign property.

I am of opinion that the proviso in Section 5 of the Act of 1914 extends to exempt a beneficiary not domiciled in the United Kingdom, and that the income of such a person, obtained from property abroad, and no part of which ever reaches the United Kingdom is not liable to Income Tax by reason only of one or more of the trustees being domiciled and resident here. In my opinion both appeals fail and should be dismissed with costs.

Warrington, L.J.—There are two Appeals from Orders of Mr. Justice Sankey on Cases stated by the Commissioners of Income Tax. They were heard together, the facts in the two Cases being, so far as material to the question for decision, the same, with one possible exception which I will refer to hereafter. Mr. Justice Sankey gave judgment in favour of the persons sought to be taxed; the Commissioners of Inland Revenue appeal.

In each Case the income sought to be taxed is income arising from stocks and shares of foreign companies. These stocks and shares are vested in trustees resident in the United Kingdom, and these trustees are therefore legally entitled to the income. The beneficiary, however, in each Case is not domiciled in or resident in the United Kingdom. No part of the income in either Case has been received in the United Kingdom, the whole of it being paid to the beneficiary in the foreign country where she resides. The Commissioners claim to charge the trustees with duty as the persons legally entitled to the income, leaving them to retain or recover the amount from their beneficiary who would thus be made ultimately liable to pay the tax.

In the Case of *Pool* v. *The Royal Exchange Assurance* the assessment was made upon the trustees " as trustees under the will of J. P. Mellor

" (deceased) for beneficiary Mrs. H. P. Munthe ". In the Case of *Williams* v. *Singer*, it is made against the trustees simply, without reference to their character as trustees or to their beneficiary. In the view I take, this difference in the facts is immaterial. Prior to the Finance Act, 1914, the income in question, not being received in the United Kingdom, would not have been subject to tax. By Section 5 of that Act, however, it is enacted that " Income Tax in respect of " income arising from securities, stocks, shares, or rents in any place " out of the United Kingdom shall . . . be computed on the full " amount of the income whether the income has been or will be received " in the United Kingdom or not ". This, however, is subject to the following proviso. " Provided that this Section shall not apply in the " case of a person who satisfies the Commissioners of Inland Revenue " that he is not domiciled in the United Kingdom or that, being a " British subject, he is not ordinarily resident in the United Kingdom ". There is no dispute that each of the beneficiaries satisfies the conditions thus laid down. The Commissioners, however, contend that if, as they insist, the trustees as the legal owners of the income are liable to be charged, they are the only persons referred to in the proviso and they are domiciled in the United Kingdom, and therefore not protected by the proviso.

It is to be observed that Section 5 of the Act of 1914 deals only with the income to be charged, and not with the persons who are to be made liable to pay. Who they are still depends on the Income Tax Acts of 1842 and 1853. The present charging Section is Section 2 of the Act of 1853, and the material provision is that contained in the first branch of Schedule D which refers to the duty " for and in respect of profits and gains arising " or accruing to any person residing in the United Kingdom." Is a trustee residing in the United Kingdom liable to be taxed on gains and profits accruing to him in which he has no beneficial interest? In my opinion the provisions contained in the Sections dealing with trustees in the Act of 1842 shew clearly enough that the person liable to be taxed is the beneficiary and not the trustee, and that the provisions of Section 41 are mere machinery by which, in the cases there specified, the tax may be the more readily recovered. [(*See* Mr. Justice Mathew in *Tischler* v. *Apthorpe* (2 T.C. at page 89), whose opinion on this point was adopted by all the judges in the Court of Appeal in *Werle* v. *Colquhoun*,(1) (20 Q.B., page 753).] The first part of Section 41 provides that the trustee, amongst other persons, of any person being an infant or married woman, lunatic, idiot, or insane, having the control or management of the property or concern of such infant, &c., shall be chargeable to the said duties in like manner and to the same amount as would be charged if such infant were of full age or such married woman were sole or such lunatic, idiot, or insane person were capable of acting for himself. It is therefore the liability of the beneficiary which is to govern that of the trustee, and by Section 44 trustees are authorised to retain the duty as against the beneficiary. It has been contended that the words " having the direction " and so on indicate that the Section is not dealing with a trustee in whom the property is vested. I can see no reason for so limiting its application. The second part of the Section deals with the case of a person not

(1) 2 T.C. 402.

resident in Great Britain and provides that he is to be chargeable in the name of such trustee, guardian, tutor, curator, or committee or of any factor, agent, or receiver having the interest of any profits or gains arising as in the Act mentioned and belonging to such person in the like manner and to the like amount as would be charged if such person were resident in Great Britain and in the actual receipt thereof. Finally, it is provided that every trustee, and so on, shall be answerable for the doing of all such acts, matters and things as shall be required to be done by virtue of the Act in order to the assessing of any such person to the duties granted by the Act and paying the same. It is the person entitled to the income who is to be charged, but in the name of the trustee, &c. It is to be observed that the Section makes no provision for the assessing of a trustee for a person not under disability and resident in this country.

The inevitable conclusion in my opinion is that the person contemplated by the Act as the taxpayer is the beneficiary and not the trustee.

I now turn to the proviso to Section 5 of the Act of 1914 and consider who, in the light of the conclusion so far arrived at, is the " person " so referred to. The object obviously is to exempt that person from taxation to which he would otherwise be liable. Was it intended to exempt a trustee only, who would not be liable, or to extend the exemption to a beneficiary on whom the liability would ultimately fall? The latter, must, in my opinion, be the true meaning. The exemption extends only of course to tax upon income not received in the United Kingdom. As to income so received, the matter remains governed by the provisions of the Income Tax Acts 1842 and 1853.

I am of opinion that both Appeals fail and must be dismissed.

Scrutton, L.J.—There are two Cases raising substantially the same question; whether a *cestui que trust* not domiciled, or, if a British subject, not ordinarily resident in the United Kingdom, is liable to bear the burden of English Income Tax on the full amount of income derived from trust funds abroad, though not remitted to or received in the United Kingdom, and is liable because his trustees, who are the legal owners of the trust funds, reside in the United Kingdom. The only material difference in the two Cases is that in the Royal Exchange Case, the Commissioners of the City of London assessed the trustees " as trustees under " the will of M. for beneficiary Mrs. Munthe ", and in Singer's Case the New Sarum Commissioners assessed the trustees in their own name simply without reference to any beneficiary.

The question turns in the first instance on the meaning of a proviso in the Finance Act, 1914, Section 5. Before that Act an assessment under Schedule D would be made " in respect of the annual profits or gains " arising or accruing to any person residing in the United Kingdom from " any kind of property whatever whether situate in the United Kingdom " or elsewhere". Such profits or gains if shares in foreign companies would be assessed under Case V as " foreign possessions " on the full amount of the annual sums actually received in Great Britain on the average of the three preceding years. This resulted in certain English owners of foreign possessions, though resident in England, bringing home only part of their profits and leaving the rest to accumulate abroad. In 1914 the

Legislature dealt with this by providing that Income Tax in respect of securities, shares, or rents in any place out of the United Kingdom should, notwithstanding anything in the fourth Case (foreign securities) or fifth Case (foreign possessions) be computed on the full amount of the income whether the income had been or would be received in the United Kingdom or not. They provided that the full income should be subject to a deduction on account of any annual interest or any annuity or other annual payment, payable out of the income to a person not resident in the United Kingdom, and added the following proviso: " Provided that this section " shall not apply in the case of a person who satisfies the Commissioners " that he is not domiciled in the United Kingdom, or that, being a British " subject, he is not ordinarily resident in the United Kingdom ". The Crown Counsel point out, I think rightly, that this proviso has a wide operation apart from any question of trustee and *cestui que trust*. Amongst other effects, it at any rate relieved a foreigner residing in the United Kingdom, but not domiciled there, from paying on all his foreign income, though not remitted to this country. It gave the same relief to a British subject not ordinarily resident in the United Kingdom, for instance, a Colonial visitor, as to his property out of the United Kingdom, even though his domicil was in the United Kingdom, as, *e.g.*, a domicil of origin.

The question in this Case is, what is the effect of the proviso as applied to trustee and *cestui que trust*. If the trustee is resident in the United Kingdom, but the *cestui que trust* is not domiciled there, can the trustee escape assessment on the whole income? If the *cestui que trust* is resident in the United Kingdom, but the trustee is not domiciled there, can the *cestui que trust* escape assessment on his whole income as distinguished from the part received in England? For it seems clear that, if the Section does not apply by reason of the absence of domicil or ordinary residence of the " person ", the old law applies and, if resident in the United Kingdom, the " person " is taxable on his receipts from foreign possessions, subject to the exemption of temporary residents from tax on foreign possessions contained in Section 39 of the Act of 1842.

Before the Act of 1914, in my view a *cestui que trust* resident in the United Kingdom and receiving remittances from property abroad, the legal estate in which was vested in a trustee abroad, would be taxable on his receipts, and could not be heard to say he was not entitled in law but only in equity to the remittance. How would the converse case of the trustee resident here with his *cestui que trust* abroad be dealt with? If he did not receive remittances here but ordered them to be sent direct to the *cestui que trust* abroad, he clearly would not be taxable; there would be no receipts here. But if he received remittances here, what was his position? The Crown Counsel said it was quite simple; he was under Schedule D a person residing in the United Kingdom to whom profits and gains accrued from property abroad which he owned, and it was quite immaterial that he was not the beneficial owner. The subject replied that it was always admissible to show by the assessing and collecting machinery provided, that wide words in the taxing Schedule had not their widest meaning, [*see* per Lord Herschell in *Colquhoun* v. *Brooks*,(1) (14 A.C., p. 493)], and this they endeavoured to do by certain Sections

(1) 2 T.C. 490.

relating to the assessing of trustees. In the case of trustees receiving in England income from foreign possessions to which others were beneficially entitled before the Act of 1914, Parliament thought it necessary expressly to provide, by Section 108 of the Act of 1842, that such trustees should be charged for the same " whether the person to whom the said " profits belong shall be resident in England or not ". This looks as if the Legislature treated the *cestui que trust* as the person to whom the profits belonged and did not consider the trustee a person to whom profits accrued from property. The earlier Sections appear to support this view. Section 41 of the Act of 1842 deals with two classes of people to be charged instead of others who cannot easily be reached. First, the representatives of incapacitated persons, infants, married women and persons of unsound mind. This class of representatives begins with " trustee ", and continues " guardian, tutor, curator or committee ". These last four persons have not the legal property in them, and the property is spoken of as the property of the infant, lunatic, &c. But the trustee of the married woman may and generally has the legal estate, yet the property is spoken of as the property of the married woman. It is provided that this class of trustee, &c., shall be chargeable in like manner as if the incapacitated persons were of full capacity. The second class dealt with by the Section is persons not resident in Great Britain, who are to be chargeable in the name of " such " trustee, &c., apparently a trustee " having the direction, control or management " of their property, or in the name of any agent in receipt of any profits or gains " arising as herein mentioned and belonging to such person ". This again treats the property which the trustee manages, or receives profits from as agent, as the property of the *cestui que trust*; and every such trustee shall be answerable for the doing of all acts required to be done " in order to the assessing of any such person ".

Section 42 is puzzling. Its apparent wording would free a trustee, who authorises a non-resident *cestui que trust* to receive the profits of English trust property, from any other liability except to give the name and residence of such person, the condition " and resident in Great " Britain " being limited to persons who have agents or receivers. But in view of the express terms of Sections 41, 51 and 53 this can hardly be so, and the Section must be limited to trustees of persons resident in Great Britain who need only give the *cestui que trust's* name.

Section 44 begins: " Where any person being trustee . . . for any " person shall be assessed under this Act in *respect of such person* ", and authorises him to retain sufficient of the trust funds to pay the assessment. Intermediate Sections provide for assessment and obtaining the information necessary for assessment, and then Section 51 provides that any person (A) who is in receipt of profits " of or belonging to any other " person " (B) " in whatever character the same shall be received for " which such other person (B) would be chargeable if he were resident in " Great Britain " shall give information in prescribed form, including the name and place of abode of any " person (B) to whom the same shall " belong " in order that such person (B) . . . may be charged either " in the name of the person (A) delivering such list, . . . or in the name " of the person (B) to whom such property shall belong, if of full age and " resident in Great Britain ". The prescribed form is contained in Section 190, (Schedule G), XVI and is to include " List to be delivered by " every trustee . . . of the name and place of residence of the person

" for whom they act in such character, and the names of those who are " joined in trust. . . . . Declaration on whom the duty is chargeable in " respect of such trust." Section 53 provides that every person (A) who shall act in any character as aforesaid, (which includes a trustee) for any other person (B), who by reason of incapacity or non-residence in Great Britain cannot be personally charged, shall deliver a statement of the amount of profits and gains to be charged on him (A) on account of such other person (B). Section 55 deals with trustees delivering imperfect lists " on behalf of any other person ". Section 170 provides that any trustee or person acting in any of the characters hereinbefore described may claim exemption on account of others. By Section 71 of the Finance (1909-10) Act, 1910, no exemption shall be given to any non-resident with certain exceptions. The Crown Counsel were asked how they proposed to deal with the case of a trustee whose own income would entitle him to exemption or a lower rate of duty, though if the income he received as trustee were added to it, he would pay a higher rate. They made the startling answer that the two incomes would be added together and the rate fixed by the total sum, and that then the trustee and *cestui que trust* might get back such part as they could, which in the case of a non-resident *cestui que trust* would be nothing, though he had paid an added rate because of the added income of his trustee.

The conclusion I draw from these involved Sections is that Parliament was endeavouring to put the burden on the beneficial owner, and only used the trustee as machinery to get at the person who had the benefit of the income. The trustee was only to be assessed " in respect of " the *cestui que trust* (Section 44), " on account of such other person " (Section 53), " on behalf of the other person " (Section 55). The person to whom the property belongs is to be charged in the name of the trustee (Section 51). The assessment by the very experienced Commissioners for the City of London, " as trustees for beneficiary " is in accordance with this view. It follows that in my opinion when Parliament exempted a class of persons from the operation of the Statute of 1914, Section 5, they were at any rate including the beneficial owner or *cestui que trust*, if he came within the description of the class. The *cestui que trust* in each of the present Cases is not domiciled in England, and, therefore, in my view, comes within the protection of the proviso and is not bound to pay on her whole income but only on that part which her trustees receive in England. The word " person " in the proviso in my view includes a beneficial owner or *cestui que trust* who can satisfy the requirements of the proviso. I am not certain that the same result might not be arrived at by treating the payment to the *cestui que trust* as an annual payment out of the income to a person not resident in the United Kingdom under the earlier part of Section 5, but in view of the difficulties about " other annual payments " discussed and to be decided in Lord Howe's Case,(1) I prefer not to rest my decision on this ground.

Both appeals must be dismissed with costs.

The Master of the Rolls.—The order will be that both appeals will be dismissed with costs.

Mr. Disturnal.—If your Lordship pleases.

---

(1) 7 T.C. 289.

Notice of Appeal having been given by the Crown, the Cases came on for hearing in the House of Lords before Viscount Cave and Lords Atkinson, Shaw of Dunfermline, Wrenbury and Phillimore, on the 17th May, 1920, when judgment was unanimously given against the Crown, with costs, confirming the decisions of the Court below.

The Attorney-General (Sir Gordon Hewart, K.C., M.P.), Mr. J. H. Cunliffe, K.C., and Mr. R. P. Hills appeared for the Crown, and Mr. Disturnal, K.C., Mr. A. M. Latter, and Mr. A. M. Bremner for the Respondents.

JUDGMENT.

Viscount Cave.—My Lords, the question raised in these appeals is whether income from foreign investments, which is received abroad by a person not domiciled in this country, is chargeable with Income Tax under the Income Tax Acts by reason of the fact that the investments stand in the names of trustees who are domiciled here. As the point raised in both Cases is the same, the appeals have been heard together.

In *Williams* v. *Singer* the Respondents are the trustees of a settlement under which the Princesse de Polignac is the beneficial tenant for life in possession. The settlement is in English form, and the trustees are all domiciled and resident in the United Kingdom, but the Princesse (who is a widow) is a French subject by marriage, and is domiciled and resident abroad. The settled fund, so far as it comes into question in these proceedings, consists of certain foreign investments of considerable value, and under orders signed by the trustees the whole income from these investments is paid to the account of the Princesse at a bank in New York, no part thereof being remitted to this country. In these circumstances the Additional Commissioners for the division of New Sarum in the County of Wilts (in which one of the Respondents resides) made two assessments upon the Respondents for the year ended the 5th April, 1916, namely, an assessment of £60,000 in respect of foreign possessions and an assessment of £5,000 in respect of foreign securities—these sums representing approximately the income from the foreign investments comprised in the settlement as above mentioned. The Respondents objected to the assessments, and appealed to the Special Commissioners, who after argument discharged them: and, on a Case being stated for the opinion of the King's Bench Division, Mr. Justice Sankey confirmed the decision of the Special Commissioners. An Appeal by the Surveyor of Taxes to the Court of Appeal was dismissed, and the Surveyor has appealed to this House. The facts in *Pool* v. *The Royal Exchange Assurance* are in all material particulars (with one exception) similar to those in the other Case. In this Case the Respondent company, which has its principal place of business in the City of London, is the trustee of the will of Mr. J. P. Mellor, deceased: and the beneficial tenant for life under the will is Mrs. H. P. Munthe, a Swedish subject domiciled abroad. The will comprises foreign investments: and the whole income from such investments is paid directly to Mrs. Munthe abroad, no part of such income being remitted to this country. The District Commissioners of Taxes for the City of London made assessments upon the Respondent company in respect of foreign possessions of £2,015 for the year ended the 5th April, 1915, and £2,018 for the year ended the 5th April, 1916—these sums representing the income of the foreign investments above

referred to. But these assessments differed from those which are in question in *Williams* v. *Singer* in one respect, namely, that instead of being made (as in that Case) upon the trustees by name without reference to any trust, they were made upon the Respondent company " as trustees under " the will of J. P. Mellor, deceased, for beneficiary, Mrs. H. P. Munthe". The Respondent company appealed to the Special Commissioners, who discharged the assessments and this decision also has been affirmed by Mr. Justice Sankey and the Court of Appeal and is the subject of appeal to this House.

My Lords, it was decided in *Colquhoun* v. *Brooks*(1) [(1889), 14 A.C. 493] that the tax imposed by the Income Tax Acts, 1842 and 1853 (Schedule D, Cases 4 and 5) upon the income from foreign securities and possessions was leviable upon so much only of that income as was remitted to the United Kingdom. But that limitation was to some extent abrogated by Section 5 of the Finance Act, 1914, which (as far as material in this appeal) is as follows :—" Income tax in respect of income arising " from securities, stocks, shares or rents in any place out of the United " Kingdom shall, notwithstanding anything in the rules under the fourth " and fifth case in section one hundred of the Income Tax Act, 1842, be " computed on the full amount of the income, whether the income has been " or will be received in the United Kingdom or not . . . and the provisions " of the Income Tax Acts (including those relating to returns) shall apply " accordingly . . . provided that this section shall not apply in the case " of a person who satisfies the Commissioners of Inland Revenue that he " is not domiciled in the United Kingdom, or that, being a British " subject, he is not ordinarily resident in the United Kingdom." It is obvious that, having regard to the proviso to the above Section, the Princesse de Polignac and Mrs. Munthe, who are domiciled abroad, could not have been assessed to Income Tax in respect of the foreign income above referred to. But the Revenue Authorities contend that they are entitled to levy tax upon that income by means of assessments upon the trustees, who are domiciled in this country. If this contention is upheld, the trustees will of course be entitled to retain the tax so paid out of the trust income payable to the beneficial life tenants, who will thus have to bear the burden of the tax from which the proviso appears to relieve them; but the Appellants contend that this is the effect of the statutes. The question to be determined is whether they have that effect. In support of the above contention Counsel for the Appellants relied principally upon the language of Schedule D to the Income Tax Act, 1853, which provides that the duties thereby imposed are to be deemed to be granted and made payable " for and in respect of the annual profits or gains arising or " accruing to any person residing in the United Kingdom from any kind " of property whatever, whether situate in the United Kingdom or " elsewhere," and upon the first general rule in Section 100 of the Income Tax Act, 1842, which provides that the duties upon profits imposed by Schedule D are to be charged on and paid by the persons " receiving or " entitled unto " such profits : and they contended that, as the income in question in the Cases under appeal " accrued " to the trustees as the legal holders of the investments, and the trustees are the persons legally " entitled " to receive it, they are the persons chargeable under the Act. Indeed, I understood Mr. Cunliffe to go so far as to say that, when funds are vested in trustees, the Revenue Authorities are entitled to look to those trustees for the tax and are neither bound nor entitled to look beyond the legal ownership.

(1) 2 T.C. 490

My Lords, I think it clear that such a proposition cannot be maintained. It is contrary to the express words of Section 42 of the Income Tax Act, 1842, which provides that no trustees who shall have authorised the receipt of the profits arising from trust property by the person entitled thereto, and who shall have made a return of the name and residence of such person in manner required by the Act, shall be required to do any other act for the purpose of assessing such person. And, apart from this provision, a decision that in the case of trust property the trustee alone is to be looked to would lead to strange results. If the legal ownership alone is to be considered, a beneficial owner in moderate circumstances may lose his right to exemption or abatement by reason of the fact that he has wealthy trustees, or a wealthy beneficiary may escape Super-tax by appointing a number of trustees in less affluent circumstances. Indeed, if the Act is to be construed as Counsel for the Appellant suggests, a beneficiary domiciled in this country may altogether avoid the tax on his foreign income spent abroad by the simple expedient of appointing one or more foreign trustees. Accordingly, I put this contention aside. On the other hand, I do not think it would be correct to say that, whenever property is held in trust, the person liable to be taxed is the beneficiary and not the trustee. Section 41 of the Income Tax Act, 1842, renders the trustee, guardian or other person who has control of the property of an infant, married woman or lunatic chargeable to Income Tax in the place of such infant, married woman or lunatic; and the same Section declares that any person not resident in Great Britain shall be chargeable in the name of his trustee or agent having the receipt of any profits or gains. Section 108 of the same Act, which deals with the profits or gains arising from foreign possessions or foreign securities provides that, in default of the owner or proprietor being charged, the trustee, agent or receiver of such profits or gains shall be charged for the same. And, even apart from these special provisions, I am not prepared to deny that there are many cases in which a trustee in receipt of trust income may be chargeable with the tax upon such income. For instance, a trustee carrying on a trade for the benefit of creditors or beneficiaries, a trustee for charitable purposes, or a trustee who is under an obligation to apply the trust income in satisfaction of charges or to accumulate it for future distribution, appears to come within this category, and other similar cases may be imagined. The fact is that, if the Income Tax Acts are examined, it will be found that the person charged with tax is neither the trustee nor the beneficiary as such, but the person in actual receipt and control of the income which it is sought to reach. The object of the Acts is to secure for the State a proportion of the profits chargeable, and this end is attained (speaking generally) by the simple and effective expedient of taxing the profits where they are found. If the beneficiary receives them, he is liable to be assessed upon them. If the trustee receives and controls them, he is primarily so liable. If they are under the control of a guardian or committee for a person not *sui juris* or of an agent or receiver for persons resident abroad, they are taxed in his hands. But in cases where a trustee or agent is made chargeable with the tax, the statutes recognise the fact that he is a trustee or agent for others, and he is taxed on behalf of and as representing his beneficiaries or principals. This is made clear by the language of many Sections of the Act of 1842. For instance, Section 41 provides that a person not resident in Great Britain shall be chargeable " in the name of " his trustee or agent. Section 44 refers to the trustee or agent of any person as being assessed " in respect of "

such person, and gives him a right to retain the tax out of any money of such person coming to his hands. Section 51, under which trustees and others are bound to make returns, refers to the event of the beneficiary being charged either "in the name of" the trustee or other person making the return or in his own name. Section 53 refers to the trustee or agent as being charged "on account" of the beneficiary, and similar expressions are found in other Sections. In short, the intention of the Acts appears to be that, where a beneficiary is in possession and control of the trust income and is *sui juris*, he is the person to be taxed, and that, while a trustee may in certain cases be charged with the tax, he is in all such cases to be treated as charged on behalf or in respect of his beneficiaries, who will accordingly be entitled to any exemption or abatement which the Acts allow.

Applying the above conclusions to the present Case, it follows, in my opinion, first, that the Respondent trustees, who have directed the trust income to be paid to the beneficial tenants for life and themselves receive no part of it, are not assessable to tax in respect of such income; and secondly, that, even if they were so assessable, they would be assessable as trustees on behalf of the life tenants, who would accordingly be entitled to the benefit of the exemption contained in the proviso in Section 5 of the Finance Act, 1914. The assessments in question in *Pool* v. *The Royal Exchange Assurance*, which were made upon the Respondents as trustees for the beneficiary, Mrs Munthe, and were probably so made with reference to Sections 41 and 108 of the Act of 1842, support this view of the Acts, but it does not appear to me that the absence of similar words in the assessments in *Williams* v. *Singer* makes any difference in the result.

The above conclusion is supported by the consideration that, under the express words of Section 5 of the Finance Act, 1914, a person thereby charged with tax is authorised to deduct from the taxable income "any "annuity or other annual payment payable out of the income to a "person not resident in the United Kingdom." It is difficult to believe that it was the intention of the Legislature, while exempting from the tax any definite part of the income which is payable to a person abroad, to impose the tax upon the whole income when so payable.

For the above reasons I think that the contention of the Appellants fails, and accordingly that these appeals should be dismissed with costs.

Lord Atkinson.—My Lords, I have had the pleasure and advantage of reading the judgment which has just been delivered by my noble and learned friend on the Woolsack. I thoroughly concur in it and I have nothing to add.

Lord Shaw of Dunfermline.—My Lords, the address just delivered to the House from the Woolsack so fully and exactly expresses the opinion I have formed, that I agree, without adding anything.

Lord Wrenbury (read by *Lord Atkinson*).—My Lords, in the decision of this Case it is essential to bear in mind (1) that the income with which we are concerned is derived from foreign securities or foreign possessions, (2) that no part of it is received in this country, (3) that the beneficiary to whom it is paid is a foreign subject neither domiciled nor resident in the United Kingdom, and on the other hand that (4) the trustees are domiciled and resident in the United Kingdom.

The Appellants initiate their contentions by pointing out quite accurately that Section 100 of the Act of 1842, to which they point as being the charging Section, charges annual profits or gains accruing to

any person, whether a subject of His Majesty or not, although not resident in the United Kingdom, from property in the United Kingdom, and that by the Fourth and Fifth Cases duty is to be charged in respect of interest arising from foreign securities or foreign possessions and is to be computed upon the sums received in Great Britain. The duties are to be charged upon the persons "receiving or "entitled unto the same". So far, therefore, a foreign subject resident in this country is chargeable upon income from foreign securities or foreign investments received in this country. But a foreign subject resident abroad and receiving the income abroad is not chargeable. This position, however, they say, was altered by Section 5 of the Finance Act, 1914, when it provided that Income Tax in respect of income arising from foreign securities shall, notwithstanding anything in the rules under the Fourth and Fifth Cases in Section 100 of the Act of 1842, be computed on the full amount of the income whether received in the United Kingdom or not. But the effect of Section 5 of the Act of 1914 so far would seem to be only that, where there is a person chargeable in respect of income arising from foreign securities, he is to be charged not, as the Act of 1842 had provided, upon so much as is received in the United Kingdom but upon the full amount whether received in the United Kingdom or not. The Appellants, however, seek to find in words of enlargement of the income charged an enactment affecting the characteristics of the person chargeable. I do not think that is the effect of Section 5 of the Act of 1914. The two things are quite distinct; the property chargeable is one thing, the person liable to be charged is another. Section 5 affects the former but not the latter. But the matter does not stop there, for Section 5 concludes with a proviso which excludes from its operation a person not domiciled in the United Kingdom or being a British subject not ordinarily resident in the United Kingdom. In other words, if the "person" there referred to is the beneficiary, then Section 5 does not apply to the beneficiary in the Case before your Lordships, and, if it were sought to assess her, the matter would remain as it was under the Act of 1842, and she would not be assessable for she is a foreign subject and the income is not received in this country.

But next the Appellants say that the persons assessable are not the beneficiary but the trustees, the persons legally entitled to the income. Section 2 of the Income Tax Act, 1853, provides as regards Schedule D that for and in respect of annual profits accruing to any person residing in the United Kingdom from any kind of property whatsoever whether situate in the United Kingdom or elsewhere—a certain duty shall be paid. The trustees, they say, are "persons" within these words; they are assessable and the foreign subject must suffer the tax in consequence. My Lords, I am not of this opinion. It is not necessary in this Case to investigate the question whether trustees are in any case assessable. I express no opinion that they are not. The case was put of a trust for accumulation of income for an infant contingently on his attaining 21, a case in which there is not in existence a beneficiary presently entitled to the income, and Section 14 of the Finance Act, 1917, was referred to as shewing, as no doubt is the case, that, nevertheless, someone must be liable in respect of the tax, and it was said this would be the trustees. I do not concern myself with this matter. It is not this Case. There is here a beneficiary of full age and not under disability. Is the tax recoverable upon the footing of the domicile and nationality of the beneficiary or of the trustees? That is the question. Upon this question Section 41 *et seq.* of the Act of 1842 are most material. Section 41 deals with two cases,

viz., (1) beneficiaries under disability and (2) persons not resident in the United Kingdom whether subjects of His Majesty or not. In the former case the trustee is to be chargeable in like manner as he would be charged if the beneficiary were not under disability. In the latter case the beneficiary is to be chargeable in the name of the trustee and the trustee is to be answerable for doing such acts as shall be required for "the assessing of any such person". Here, therefore, are particular cases in which the trustee is to be dealt with in manner provided by this Section. The case of a beneficiary not under disability and resident in and not out of the United Kingdom is not dealt with in any similar manner and why? Presumably because such a person is to be dealt with by assessment in his own name. Section 42 is one which discharges a trustee, who returns a certain list disclosing the person who actually receives the income, from responsibility for doing any other act "for the purpose "of assessing such person," *i.e.*, the beneficiary. Section 44 is one which entitles the trustee of a person under disability and who is assessed "in respect of such person" to retain money sufficient to pay the assessment. These Sections point to the conclusion that the person to be taxed is the beneficiary, not the trustee, and none the less because under certain circumstances the beneficiary is to be reached through the trustee. If the trustee is a foreign subject resident abroad but the beneficiary is in the United Kingdom, taxation will not be escaped and, if the trustee is a British subject resident in the United Kingdom but the beneficiary is a foreign subject resident abroad, taxation is not imposed by reason of those facts.

My Lords, no one can say that the Income Tax Acts are easy reading, but upon the question before your Lordships their effect is, I think, reasonably plain. I agree with the judgments given below, and am of opinion that this Appeal fails and should be dismissed.

Lord Phillimore.—My Lords, the facts in the Case of *Williams* v. *Singer* are as follows:—The Respondents are the legal owners of the investments in question and entitled at law to receive the income from them, but they hold the investments and the title to the income as trustees under the marriage settlement of the Princesse de Polignac, a lady apparently of American extraction who has married two French nobles in succession and is now a widow. Under the various instruments, which include two marriage settlements, and the release of a power of appointment contained in the first, the trustees, in the events which have happened, hold the property on trust to pay the income to the Princesse during her life, and then to the children, if any, as to which your Lordships are not informed, of the marriage, and, failing children, to such persons as the Princesse should by will appoint and, subject thereto, for the brothers and sisters of the Princesse. There are some subsidiary provisions in the deed which were relied upon by Counsel for the Appellant, but I do not think that any of your Lordships were impressed by them. The Princesse is a French subject, and is not resident in the United Kingdom. The Respondents instructed a bank in New York to collect and receive the dividends on the shares in the Singer Company and to credit them to the account of the Princesse with the same bank. These dividends have not been remitted to or received in the United Kingdom. Upon this set of facts Mr. Justice Sankey decided as follows:—"In my "opinion it is not possible to make a trustee liable for Income Tax to be "paid out of the monies of the *cestui que trust* when the *cestui que trust* "is himself not liable. The machinery of Section 41 of the Act of 1842 "is machinery by which, through a trustee, a person who is liable for

" Income Tax can be reached. The residence of a trustee is not visited " upon the *cestui que trust* so as to make the latter liable for Income " Tax when he would not otherwise be so liable ". In the Court of Appeal the Master of the Rolls expressed himself as follows :—" It was " argued for the Crown that this Section (Section 41 of the Act of 1842) " did not extend to a case in which a trustee was legal owner, and was " merely inserted in the Statute to include cases where a trustee, not " being legal owner, nevertheless had ' the direction, control or " ' management '. This contention, however, is not well founded. A " trustee for a married woman is a person who is usually the legal owner " of the property to which the married woman is beneficially entitled. " I am of opinion that the view expressed by Mr. Justice Sankey was " well founded, and that Section 41 is mere machinery by which a person " who is liable for Income Tax can be reached through the trustee or " other persons mentioned in the Section. The residence of the trustee " is not a determining factor to render liable to Income Tax a person " who would not otherwise be liable or, through the medium of a trustee, " to render income liable to tax which would not be so liable in the hands " of the beneficiary himself. The income in question does not, in my " opinion, fall within ' annual profits or gains accruing to any person " ' residing in the United Kingdom ' within the meaning of Schedule D. " This income accrues to a foreigner residing abroad, and the fact that " there are English trustees residing here does not bring this income " into charge ". He also relied upon the proviso at the conclusion of Section 5. Lord Justice Warrington held that it was the liability of the beneficiary which was to govern that of the trustees and that, in consequence, as the beneficiary was not resident within the United Kingdom, the trustees were not liable. But he went further, and considered the general question of the liability of trustees to assessment and taxation and expressed himself as follows :—" Is a trustee residing in " the United Kingdom liable to be taxed on gains and profits accruing " to him in which he has no beneficial interest? In my opinion the " provisions contained in the Sections dealing with trustees in the Act " of 1842 show clearly enough that the person liable to be taxed is the " beneficiary and not the trustee, and that the provisions of Section 41 " are mere machinery by which, in the cases there specified, the tax may " be the more readily recovered ". And again : " It is to be observed " that the Section makes no provision for the assessing of a trustee for " a person not under disability and resident in this country ". He also relied upon the proviso. Lord Justice Scrutton thus expressed himself : " The conclusion I draw from these involved Sections is that Parliament " was endeavouring to put the burden on the beneficial owner and only " used the trustee as machinery to get at the person who had the benefit of " the income. The trustee was only to be assessed ' in respect of ' the " *cestui que trust* (Section 44) ' on account of such other person ' (Section " 53) ' on behalf of the other person ' (Section 55). The person to whom " the property belongs is to be charged in the name of the trustee " (Section 51). . . . It follows that, in my opinion, when Parliament exempted a class of persons from the operation of the Statute " of 1914, Section 5, they were, at any rate, including the beneficial " owner or *cestui que trust* if he came within the description of the " class. The *cestui que trust* in each of the present Cases is not domiciled in England, and therefore, in my view, comes within the protection of the proviso and is not bound to pay on her whole income but " only on that part which her trustees receive in England. The word

" 'person' in the proviso in my view includes a beneficial owner or " *cestui que trust* who can satisfy the requirements of the proviso." The Lord Justice was also inclined to think that the same result might be arrived at by treating the payment to the *cestui que trust* as an annual payment out of the income to a person resident out of the United Kingdom under the earlier part of Section 5.

The points raised by the Judgment of the Court of Appeal cover a wide field and the arguments of the Counsel for the Appellant have of necessity traversed the same ground; but at the conclusion of the argument for the Appellants your Lordships were of opinion that it would not be necessary for the purpose of deciding this Case to express your opinion upon some of the points raised. It was suggested by Counsel for the Appellant that the Income Tax Acts, except in certain special and rather narrow instances, took no account of the position of trustees, but regarded only the legal ownership. On the other hand, from some of the language in the judgment of the Court of Appeal, especially that of Lord Justice Warrington, it would appear that a contention that the Income Tax Acts looked generally to the beneficiary and disregarded the trustee, except as a means of reaching the beneficiary in certain rare cases, had found favour. I do not propose to express an opinion whether either, or which if either, of these two extreme views is right. The charge is laid upon the taxpayer by the first Section of each Taxing Act: " for and in respect " of the annual profits or gains arising from or accruing to any person " or persons whatever resident in the United Kingdom from any kind " of property whatever ". For the purpose of ascertaining the person to be charged by Section 5 of the Act of 1914, your Lordships have to determine who are the persons charged either by the words just quoted or by any additional provisions in the later Sections of the Act of 1842.

I think it convenient to mention, first, that Section 43 adds to the list of persons charged a receiver appointed by a Court, not as a person chargeable in himself, this being a very convenient provision for ensuring that the person ultimately found to be the owner shall pay. Then comes Section 41 which also adds to the list of persons, who are not owners under any construction but yet are to be charged, the guardian of an infant, or the curator or committee of an insane person, whether the infant or insane person reside in Great Britain or not, and the factor, agent or receiver of a person not resident in Great Britain. These are unquestionable additions. Then in the same Section and in the same relation is inserted the trustee of a married woman certainly, possibly also the trustee for an infant or insane person. If the trustee, as being legal owner, is already chargeable under the general Section, there would be no necessity for his insertion into this Section. It was attempted to escape from the force of this argument by a suggestion that the word " trustee " did not mean trustee but something else. The Master of the Rolls expressed himself upon this point in words which I have already quoted. I find it rather difficult to express my rejection of the argument in respectful language. The very essence of the position of a trustee is that he is a person who at law has all the rights of an owner, but who has nevertheless the obligation, which he has undertaken by accepting the trust, of using his powers as legal owner for the benefit of some person not himself or some object not his own. As to married women, the Act of 1842 was passed long before the modern Married Women's Property Acts; and the one case where, under the law as it then stood, a married woman could be treated as the legal owner or as in a position equivalent to that of a legal owner is especially provided for by

Section 45: It remains, therefore, that the argument from this Section is a forcible one. In certain specified cases the trustee, in common with the guardian and committee, is made chargeable to Income Tax in like manner and to the same amount as would be charged if the infant were of full age or the married woman were sole or the insane person capable of acting for himself. But for this Section, the guardian or committee would not be liable. Section 42 provides that " No trustee who shall have " authorised the receipt of the profits arising from trust property by " the person entitled thereunto . . . nor any agent or receiver of " any person being of full age and resident in Great Britain (other than " a married woman, lunatic, idiot and insane person) " who returns a list giving the name and residence of such person, shall be required " to do " any other act for the purpose of assessing such person," unless the Commissioner requires his evidence. Be it observed the provision is not that a trustee, agent or receiver who furnishes a list shall be released from assessment and charge, but that he is not to be required to do anything more for the purpose of arriving at the assessment of the person to be charged. By Section 51, " Every person who shall be in the receipt " of any money or value, or the profits or gains arising from any of the " sources mentioned in this Act, of or belonging to any other person . . . " for which such other person is chargeable ", shall deliver a list " with a " declaration whether such person is of full age, or a married woman living " with her husband or a married woman for whose payment of the duty " hereby charged on her the husband is not accountable by this Act, or " resident in Great Britain, or an infant, idiot, lunatic, or insane person, " in order that such person . . . may be charged either in the name of the " person delivering such list, if the same shall be so chargeable, or in the " name of the person to whom such property shall belong, if of full age and " resident in Great Britain, and the same be so chargeable by this Act ". Further light is thrown upon this matter by the provisions of Section 108 for regulating the mode in which duty in respect of profits or gains arising from foreign possessions or foreign securities is to be assessed. The Section contains a provision in the following words " in default of the " owner or proprietor thereof being charged, the trustee, agent or " receiver of such profits or gains shall be charged for the same . . . " whether the person to whom the said profits belong shall be resident " in Great Britain or not ". Who is the person to whom the profits belong, and who is called the owner or proprietor and in default of whom the trustee is to be charged? Surely the beneficiary, the owner in equity.

Putting these Sections together, it would appear that trustees in the cases provided for in Section 41 and Section 108 are made the person assessable and liable, but that no trustee who has authorised the receipt of the profits from the trust property by the person entitled is assessable or liable, being bound only to the discharge of the obligations imposed upon him by Section 42. It may perhaps be said that, where there is a trust for accumulation or for payment of debts, no person can be said to be entitled to the receipt of the profits and that in such case the trustee is to be the person to be assessed. It is possible also that, where trustees have the management of a business, they should be the persons to be assessed or charged. There are disbursements which may have to be made in the course of conducting a business which a prudent owner would consider as deductions from profits and which trustees would make before they paid the net income over to the beneficiary, but which, nevertheless, for Income Tax purposes, as the law at present stands, are not considered as legitimate deductions from income—cases of which the decision of this

House in *Strong & Co.*, v. *Woodifield*(1) [(1906), A.C. 448] is an example. In these cases if the Revenue is to receive its full quota, it would seem that the assessment must be put upon the trustee and not upon the beneficiary, and that in such cases the trustee is the person to be assessed. The Case now before your Lordships is not one of such cases. The Trustees here merely exist in order to preserve the settlement. Their duty so long as the Princesse is alive is to see that the dividends reach her. In law they are entitled to them and they must give the discharge to the company; but the person entitled within the meaning of Section 42 and the person to whom they belong within the meaning of Section 51 is, as it appears to me, the Princesse. These considerations might be enough to decide the Case in favour of the Respondents, but I think that the proviso of Section 5 of the Statute of 1914 may fairly be relied upon as an indication that the Statute did not intend to reach a person in the position of this lady.

Lastly, while as at present advised I am inclined to agree with Counsel for the Appellant that the words in the earlier part of the Section "a "deduction on account of any annual interest or any annuity or other "annual payment payable out of the income to a person not resident "in the United Kingdom" are not meant to cover the case where a trustee in this country is bound to pay the whole income to a person outside, still I think that the words are useful as supporting the general sense of the conclusion at which I have arrived. If the income which the Princesse is to receive from these shares had been charged, say by the person who first gave them to her, with an annuity in favour of an old servant residing in America, it seems to me that this annuity could be deducted from the income liable to tax; and it would be strange if this were so and yet the residue of income also received by a person residing out of the United Kingdom were liable to tax. I agree that this Appeal should be dismissed.

The Case of *Pool* v. *the Royal Exchange Assurance* should be determined on the same grounds, and I agree that the Appeal also in this Case should be dismissed.

In the Case of Williams *v.* Singer.

Questions put:

That the Order appealed from be reversed.

The Not Contents have it.

That the Order appealed from be affirmed and this Appeal dismissed with costs.

The Contents have it.

In the case of Pool (Surveyor of Taxes) *v.* Royal Exchange Assurance.

Questions put:

That the Order appealed from be reversed.

The Not Contents have it.

That the Order appealed from be affirmed and this Appeal dismissed with costs.

The Contents have it.

---

(1) 5 T.C. 215.

No. 414.—IN THE HIGH COURT OF JUSTICE (KING'S BENCH DIVISION).—2ND JULY, 1918.

COURT OF APPEAL.—21ST, 27TH AND 31ST MARCH, 1919.

HOUSE OF LORDS.—17TH MAY, 1920.

W. M. G. SINGER v. A. W. WILLIAMS (Surveyor of Taxes).(1)

Income Tax, Schedule D—Dividends of shares of a foreign corporation—Income Tax Act, 1842 (5 & 6 Vict. c. 35), Section 100, Schedule D, Cases IV and V—Finance Act, 1914 (4 & 5 Geo. 5, c. 10), Section 5.

The Appellant, who resided in the United Kingdom, was assessed to Income Tax under Schedule D for the year 1915-16 in respect of dividends derived from an American corporation in which he was a shareholder. The liability to tax was computed in accordance with the Rules of Case V of Schedule D as modified by Section 5 of the Finance Act, 1914, on the average of the full amount of the income arising in the three years preceding the year of assessment. The Appellant contended (1) that the shares in the foreign company were securities chargeable under the Rules of Case IV of Schedule D on the basis of the income of the year of assessment, (2) that in any event the provisions of Section 5 of the Finance Act, 1914, required the tax to be charged on the basis of the income of the year of assessment and not on the average amount of the income of the three preceding years, and (3) further, that if the latter basis were correct, Sub-clause (b) of Section 5 of the Finance Act, 1914, operated to exclude from the computation of liability any income which was paid or became due before the 6th April, 1914.

Held, (1) *that the shares in the American corporation were foreign possessions chargeable under the Rules of Case V of Schedule D, Section 100 of the Income Tax Act, 1842, as extended by Section 5 of the Finance Act, 1914, (2) that Section 5 of the Finance Act, 1914, which provides that the tax on income arising from securities, stocks, shares and rents in any place out of the United Kingdom shall be computed on the full amount of the income, whether remitted to the United Kingdom or not, does not alter the basis of computation provided by the Rules of Cases IV and V, Schedule D, Section 100, Income Tax Act, 1842; (3) that while the income referred to in Sub-clause (b) of Section 5 of the Finance Act, 1914, is excluded from taxation, it is not excluded from computation of the three years' average under the Rules of Case V of Schedule D in order to arrive at the amount of the income to be taxed for the year of assessment.*

(1) Reported K.B.D. [1918] 2 K.B. 432; C.A. [1919] 2 K.B. 94; and H.L. in [1920] 36 T.L.R. 659.

CASE.

Stated under Section 59 of the Taxes Management Act, 1880, by the Commissioners for the General Purposes of the Income Tax Acts for the Division of Romsey in the County of Southampton.

---

1. At a meeting of the above Commissioners on the 6th day of October, 1916, the above Appellant appealed against an assessment on him under Schedule D of the Income Tax Acts for the year ended the 5th April, 1916, in the sum of £80,000 in respect of foreign possessions on the following amongst other grounds :—

> That in view of Section 5 of the Finance Act, 1914, such computation should be based on the amount of the profits in the year of assessment and not on the average amount thereof in the three preceding years.

This case relates only to the above ground, the other grounds having been withdrawn by the Appellant.

2. The facts proved or admitted relating to the above ground were that the Appellant resides, and for several years past has resided, at Norman Court in the said Division of Romsey and his income, so far as it is the subject matter of the assessment in question, is derived from the dividends which he received as a shareholder in an American corporation, *i.e.*, the Singer Manufacturing Company of New Jersey in the United States of America.

3. It was contended on behalf of the Appellant as regards the above ground that, in view of the terms of Section 5 of the Finance Act, 1914, the profits of the Appellant for the purposes of the assessment under appeal must be computed on the basis of the actual amount thereof in the year of assessment ending 5th April, 1916, and not on the average of the amount thereof in the three previous years of average, and further that, if it should be held that the income chargeable must be based on the average of preceding years, then by virtue of the provisions of the Income Tax Acts and of Sub-clause (*b*) of the said Section 5 of the Finance Act, 1914, no sums which were paid or became due before April 6th, 1914, could be brought into computation.

4. In answer thereto it was contended on behalf of the Surveyor of Taxes for the Crown that the provisions of Section 5 of the Finance Act, 1914, in no way alter or repeal the rule laid down in Case 5 of Schedule D, Section 100 of the Income Tax Act, 1842, that the duty is to be computed on an average of the three preceding years.

5. We decided that on the true construction of Section 5 of the Finance Act, 1914, the computation fell to be made on the average of the three preceding years.

6. It was agreed between the parties that, if the computation were made on the basis of the actual amount of profits in the year of assessment, the figure of assessment should be £47,080 and that, if the computation were made on an average of the three preceding years, the figure of assessment should be £76,667. If the further contention by the Appellant that, if the income is chargeable on the basis of preceding years, no sums which were paid or became due before April 6th, 1914, can be brought into the computation, is correct, then an adjustment is to

be made by reference to the figures given in the answer by the Appellant to our Precept dated August 18th, 1916.

7. We accordingly reduced the assessment to the sum of £76,687, and confirmed it in that amount, whereupon dissatisfaction was expressed on behalf of the Appellant and subsequently a Case was demanded on his behalf as regards our decision, which we hereby state and sign accordingly for the opinion of the High Court thereon.

Dated this 13th day of January, 1917.

SPENCER F. CHICHESTER.
H. W. FADEN.
GEORGE BRISCOE.

The Case was argued on the 2nd July, 1918, before Mr. Justice Sankey, when Mr. Edwardes Jones appeared for the Appellant, and the Attorney-General (Sir F. E. Smith, K.C., M.P.) and Mr. T. H. Parr for the Surveyor of Taxes. Judgment was given in favour of the Crown with costs.

JUDGMENT.

Sankey, J.—The Appellant resides near Southampton and receives income, so far as it is the subject matter of the assessment in question, from dividends as a shareholder in the American corporation entitled the Singer Manufacturing Company of New Jersey in the United States of America.

Before the Finance Act of 1914 a charge in respect of income from foreign securities was made under the 4th Case of Schedule D and from foreign possessions under the 5th Case of Schedule D in Section 100 of the Income Tax Act, 1842, and this charge was based on the sums received in the United Kingdom as therein set out.

Under Section 5 of the Finance Act, 1914, the tax in respect of income arising from securities, stocks, shares or rents in any place out of the United Kingdom is to be computed on the full amount of the income, whether the income has been or will be received in the United Kingdom or not.

The Commissioners have assessed the Appellant for the accounting period ending April 5th, 1916, upon the average of the amounts received as dividends on his shares over the previous three years, and he contends :—

(1) that, by reason of the words in the earlier part of Section 5 of the Finance Act of 1914, he can only be assessed on the actual amount received during the one year :

(2) that, by reason of the words in the later part of the Section, "nothing in those provisions as to the receipt of sums in "the United Kingdom shall be construed so as to render liable "under those rules to income tax for the current or any "subsequent year any sum which represents any income from "shares which was paid or became due before the 6th April, "1914," a similar result is reached.

As to (1), the 4th Case above referred to enacts that the duty to be charged is to be computed on a sum not less than the full amount of the sums received in the current year. The 5th Case enacts that the duty is to be computed on an average of the full amount of the actual sums received during the three preceding years.

It was first contended by the Appellant that shares were securities and came within the 4th Case, and that, therefore, the actual amount received during the current year must be taken and not the averaged amount.

Having regard to the decisions of Mr. Justice Wright in *Bartholomay Brewing Company* v. *Wyatt*(1), and *Nobel Dynamite Trust* v. *Wyatt*(2) ([1893], 2 Q.B. 499), and of Lord Justice Moulton in *Gramophone and Typewriter, Ltd.* v. *Stanley*(3) ([1908], 2 K.B. 97), I am of opinion that it is not open to me to uphold this contention, and that dividends from shares are assessable under Case 5; that is, on an average of three years.

It was then contended that Section 5 expressly or impliedly overruled those decisions. As to the Section expressly overruling them, there is nothing therein to that effect. It nowhere says so. As to its impliedly overruling them, it was argued that, because it says that Income Tax is to be computed on the full amount of the income, this meant the full amount of the income received in the particular year and not the averaged amount.

In my view this contention is incorrect. Section 5 was a new departure in legislation, in that it made taxable dividends on shares not remitted to this country, but the income is to be computed as provided in the Income Tax Act, 1842, as interpreted by the decisions thereunder; that is to say, on an averaged amount.

As to (2), it was contended on behalf of the Appellant that no sums which were paid or became due before April 6th, 1914, could be brought into computation; that the Section was not retrospective; and that these sums would be brought into computation if the average of three years were taken.

In my view this is a misapprehension. The real question is, what is the meaning of the words " and nothing in those provisions as to the receipt " of sums in the United Kingdom shall be construed so as to render liable " under those rules to income tax for the current or any subsequent year " any sum which represents any income from shares which was paid or " became due before the 6th April, 1914 "?

I think that these words refer to sums actually received, and that the true effect of them is to prevent income paid or due before that date and retained abroad from being liable to Income Tax under the 4th or 5th Cases of Schedule D if subsequently remitted to or received in the United Kingdom—in other words, they are inserted to prevent a double taxation of such sums, and have no application to the user of such sums for the purpose of an arithmetical computation of the average income.

In the result, both grounds taken by the Appellant fail and the appeal must be dismissed.

Mr. Parr.—My Lord, the appeal will be dismissed with costs?

Sankey, J.—Yes.

---

(1) 3 T.C. 213. (2) 3 T.C. 224. (3) 5 T.C. 358.

An appeal having been entered against the judgment of Mr. Justice Sankey, the Case came on for hearing in the Court of Appeal before the Master of the Rolls, and Warrington and Scrutton, L.JJ., on the 21st, 27th and 28th March, 1919. Sir John Simon, K.C., and Mr. Edwardes Jones appeared for the Appellant, and the Attorney-General (Sir Gordon Hewart, K.C., M.P.), and Mr. T. H. Parr for the Crown.

On the 31st March, 1919, judgment was delivered unanimously in favour of the Crown with costs, affirming the decision of the Court below.

JUDGMENT.

The Master of the Rolls.—The questions raised by this Appeal are whether the dividends which the Appellant, W. M. G. Singer, receives as a shareholder in the American corporation entitled The Singer Manufacturing Company of New Jersey, in the United States of America, fall to be assessed for Income Tax under the Fourth Case of Schedule D as "foreign securities", or under the Fifth Case of Schedule D as "foreign possessions", and, if the latter, whether any sums which were paid or became due in respect of dividends before 6th April, 1914, can be brought into the computation in ascertaining the average of the three years previous to the year of assessment. The assessment in question is for the year ending 5th April, 1916.

Before the Finance Act of 1914, Income Tax was levied upon the amount received in the United Kingdom in respect of income from "foreign securities" and "foreign possessions", but by the Finance Act, 1914, Section 5, the tax "in respect of income arising from securities, stocks, shares or rents in any place out of the United Kingdom . . . shall be computed on the full amount of the income, whether the income has been or will be received in the United Kingdom or not." The Appellant has been assessed for the year 1915-16 upon the dividends received from the American company on an average of the three preceding years, as directed by Schedule D, Fifth Case. The Appellant contends that such assessment is erroneous and that the assessment should have been on the income of the current year, in accordance with Schedule D, Fourth Case. This depends upon whether the shares in companies abroad fall within the description of "foreign securities" in the Fourth Case, or "foreign possessions" in the Fifth Case.

In *Bartholomay Brewing Company* v. *Wyatt*(1), ([1893] 2 Q.B. 499), it was held by Mr. Justice Wright that profits received in England from shares in an American Brewery company held here fell within the Fifth Case, and not within the Fourth Case: "Shares in a company are not "securities but portions of its capital" (*see* page 516). Again, in *Gramophone, Limited* v. *Stanley*(2) ([1908], 2 K.B. 89), Lord Justice Fletcher Moulton expressed the same view: "The holding of shares in "a foreign corporation, entirely situated and carrying on business in a "foreign country, comes unquestionably under Case V" (*see* page 97). And again at page 104: "The shares remain, in my opinion, possessions "in that foreign country, and come under the Fifth Case". The language used by Lord Herschell in *Colquhoun* v. *Brooks*(3) (14 A.C. 493) at page 505, is not in any way inconsistent with this view. He refers to income arising from "investments or from possessions outside the United

(1) 3 T.C. 213. (2) 5 T.C. 358. (3) 2 T.C. 490.

" Kingdom," and may well have used the term " investments " as equivalent to " foreign securities ", without intending to include shares in companies in that description. but including shares in companies abroad under the description of " possessions outside the United Kingdom ".

I am of the same opinion as Mr. Justice Wright and Lord Justice Fletcher Moulton that the word " securities " in the Fourth Case does not include shares in companies, which are not " securities " in any proper sense of the word, although the same word with a context to aid it may in some cases, for instance in wills, be used with a sense and meaning extending to include shares in companies. The word " shares " as used in the latter part of Schedule D, Fourth Case, obviously means " shares of annuities " and does not assist to give any wide meaning to " securities ". The result is that shares in American companies come within the Fifth Case as foreign possessions.

It was further urged that the language of Section 5 of the Finance Act, 1914, precluded any computation based upon an average of the three preceding years, as the Section says " notwithstanding anything in " the rules under the fourth and fifth case in Section one hundred " of the Act of 1842, but these words are used, as these two Rules are departed from by including for taxation the full amount of the income, and not merely the amount received in the United Kingdom, as provided for by both these Rules.

The remaining point taken by the Appellant was that, having regard to Clause (*b*) of the Finance Act, 1914, Section 5, any income which was paid or became due before the 6th April, 1914, ought not to be included in computing the average of the three preceding years, and as these three years are 1912-13, 1913-14 and 1914-15, the effect would be to exclude two years from the computation. In my opinion there is no foundation for this contention. The income referred to in Clause (*b*) is excluded from taxation, but is not excluded from the computation of the three years' average in order to arrive at the amount of the current year's income to be taxed.

In my opinion the Appeal fails and should be dismissed.

Warrington, L.J. (read by *Scrutton*, L.J.).—The question in this Case is whether, in assessing the Appellant to Income Tax on income from shares in a foreign company, the duty to be charged should be computed on the income of the current year or on an average of the three preceding years.

Subject to two minor points, which I will deal with hereafter, the decision turns on the further question whether the shares are to be treated as " securities ", and therefore within Case 4 under Schedule D, or as " possessions ", and therefore within Case 5. The answer depends on the true construction of the language in which Cases 4 and 5 are expressed.

Dealing with the question in the first instance without reference to authority, I am of opinion that, although for some purposes and in some contexts the word " securities " may have a meaning wide enough to comprise a number of things which are not securities for money in the proper sense, in this Statute the word has not that wider meaning, and that shares in a trading company are comprised in the expression " possessions ", and are therefore within the 5th Case. The reason for providing for computation on an average in the one case and not in the

other seems obvious, namely, that the one class of income may be liable to fluctuation, whereas the other would normally be constant. Income from shares in a company may be, and often is, liable to fluctuation, and one would expect, therefore, to find it included in the 5th Case rather than under the head of income from securities, which normally at all events may be expected to be constant. Moreover, shares in a company are in truth portions of its capital and are not properly described as securities.

The question, however, has already been decided, in accordance with the view expressed above, in the Case of the *Bartholomay Brewing Company* v. *Wyatt*(1) ([1893], 2 Q.B., page 499). It is true that the shares there in question constituted the entire capital of the foreign company; this fact, in my opinion, has no material bearing on the question. An opinion to the like effect was expressed by Lord Justice Fletcher Moulton in the *Gramophone and Typewriter, Limited* v. *Stanley*(2) ([1905] 2 K.B., page 97).

On principle, therefore, as well as on authority, I think the income in the present Case falls under Case 5 and not under Case 4.

It was contended that this construction should, if possible, be avoided, inasmuch as it gives rise to a difference in the mode of dealing with income from shares in British companies and income from shares in foreign companies. It is said that a shareholder in a British company pays tax at the current rate in the £ on the actual amount of his dividend warrant, whereas, acting on the view expressed above, a shareholder in a foreign company would pay tax on the average of his warrants for three years. But this apparent anomaly arises from the fact that in the case of a British company the shareholder is paying a part of the tax paid by the company and this has already been computed on the principle of average. In the case of a foreign company the profits of the company itself cannot be charged at all, and the tax falls for the first time on the income of the shareholder. At any rate, it seems to me that the suggested anomaly arises from the plain words of the Act and that we ought not, because of it, to give a strained and unnatural construction to those words.

It was further contended that under Section 26 of the Customs and Inland Revenue Act, 1885, and the Sections there referred to of earlier Acts, a banker collecting the amount of warrants for his customer would have to deduct and pay the tax at the current rates on the amount of such warrants without reference to the principle of average. But assuming that a banker merely collecting a warrant for an ordinary customer is within that Section, as to which I express no opinion, I see no difficulty in adjusting the liability of the taxpayer on the principle of average. The provision in question is merely intended to facilitate collection, and does not determine the position of the taxpayer as between himself and the Crown.

It remains to consider two points taken on the construction of Section 5 of the Finance Act, 1914, by which the tax is imposed on the entire income from shares in foreign companies, whether received in the United Kingdom or not. The first arises on the opening words of the Section: "Income Tax in respect of income arising from . . . shares . . . in any place out of the United Kingdom shall, notwithstanding

(1) 3 T.C. 213. (2) 5 T.C. 358.

" anything in the rules under the fourth and fifth case in section one " hundred of the Income Tax Act, 1842, be computed on the full amount " of the income, whether the income has been or will be received in the " United Kingdom or not." It is in the Rules there referred to that the provision is found limiting the tax to income received in the United Kingdom, and it is in the Rule under the 5th Case that the provision is found for computation on an average of three years, and it is contended on the part of the Appellant that both these provisions are abrogated by the words " notwithstanding ", &c. In my opinion, however, the words " whether the income has been or will be received in the United Kingdom " or not " show that what was intended to be abrogated was the provision limiting the taxable income to that which is received in the United Kingdom and that the method of computation remains unaffected.

The second point arises on the words " nothing in those provisions " (namely, the provisions of the Income Tax Acts) " as to the receipt of " sums in the United Kingdom shall be construed so as to render liable " under those rules to income tax for the current or any subsequent year " any sums which represent . . . (*b*) income from any such . . . " shares . . . which was paid or became due before the sixth day " of April nineteen hundred and fourteen ". The year of assessment in the present Case ended on the 5th April, 1916, and it is contended that the provision I have read prevents the application of the principle of average, inasmuch as one of the three years would be prior to the 6th April, 1914.* The answer is, that it is not sought to render liable to tax any income which was paid or became due before that date. Such income is only taken account of for purposes of computation.

On the whole, I am of opinion that the Appeal fails and must be dismissed.

Scrutton, L.J.—Before 1914, foreign securities and foreign possessions paid Income Tax on the income received in England. The Finance Act of 1914 substituted the full amount of income for the income received. Mr. Singer, who derives income from shares in a United States company, and who is a member of a family which has done much to elucidate the law of Income Tax in England by its struggles to pay no more than the amount that it justly ought to pay in its view, raises three points on the construction of that Act. The actual point raised appears to me to be of comparatively small importance, for, if Mr. Singer's view that he is only to be taxed on the income of the year prevails, in this year he gets a benefit, but he will have to pay more in some subsequent year than he would have done if the doctrine of average prevailed. In the long run, he will remain as he was whichever system is adopted, but he would in this year get a temporary benefit, which he would lose in some future year if his construction is adopted.

The first point that he takes is that his income is from securities under Case 4, and not from possessions under Case 5; and he says that shares in foreign companies are securities and not possessions. The word " securities " seems to me quite inappropriate and inaccurate to describe shares in companies. Shares in companies and the income therefrom are not secured on anything. The share is a part of the capital—not a security. The income, the dividend, is not secured on anything.

* Note: This should have read " as *two* of the years would be prior to the 6th April 1914."—*See* explanation by Scrutton, L.J., on page 429.

Further, the word "securities" was first used in 1842. The first English Limited Liability Company Act was in 1844, and Limited Liability Companies were then a very rare thing. As far as I know, there were no foreign Limited Liability Companies in 1842, and it seems to me, therefore, very unlikely that the word "securities" was selected by the Legislature in 1842 to cover a non-existing form of property at the time. So much without authority.

With authority, we have the decision of Mr. Justice Cave and Mr Justice Wright in the *Bartholomay*(1) Case that securities fall within Case 5 and not within Case 4; and we have what impresses me very considerably, that after that decision Parliament has, in my view, twice recognised and adopted its accuracy. When in the Finance Act of 1914 this matter was dealt with, Parliament expressly adopted the language "securities, stocks, shares or rents" using "stocks" and "shares" as distinguished from "securities". I am also impressed by the fact that when Parliament last year codified the Income Tax Acts, purporting only to codify them and not to amend them, it expressed the law on this point in its Schedule in Case 5: "The tax in respect of income arising "from stocks, shares or rents . . . shall be computed on the full "amount thereof on an average of the three preceding years". On calling Sir John Simon's attention to that view of the Legislature, he says boldly that the Legislature was wrong, that it made a mistake, and that in purporting to codify the Act it has really amended it. A more natural explanation appears to me to be that the view which Parliament had adopted, which was the view of Mr. Justice Cave and Mr. Justice Wright, was the correct view and that, therefore, shares in a foreign company fall within, as I have said, foreign possessions in Case 5 and not within securities in Case 4.

But a very elaborate argument was addressed to us, with great emphasis and conviction, that the practice of banks under a series of Sections, to which we were referred, showed that the view, which I have hitherto suggested was the correct one, was in fact incorrect. Section 26 of the Customs and Inland Revenue Act, 1885, expanding a long series of Sections which are all recited, and to all of which we were referred, requires banks receiving certain income, which may include dividends from foreign companies, to do certain acts with regard to it with a view that the Inland Revenue shall receive its Income Tax on those sums, and it was stated very confidently that banks never deal, nor does the Inland Revenue, with a three years' average, but merely deduct Income Tax on the one year's sum that has been received. Now, I have some familiarity with the practice and I have carefully gone through the Sections, and I am quite satisfied that the argument is founded on a complete misapprehension. The acts which the banks are required to do will be found in the Income Tax (Foreign Dividends) Act, 1842, Section 2, and a bank is required to deliver to the Commissioners an account of the amount of dividends, whereupon the Commissioners are to make assessments, in that Act under Schedule C, but in a later Act (the Income Tax Act of 1853) under Schedule D; and then the bank is to deduct, in accordance with the assessment, the Income Tax. If the bank only returned one year's payment, what are the Inland Revenue Commissioners to do, assuming that it is a foreign dividend coming within Case

(1) Bartholomay Brewing Co. v. Wyatt. 3 T.C. 213.

5? They have Rules provided for them; they are to act under the Rule in Case 1 for dealing with an average. If they have nothing to get a average from, as, in Case 1, if the business has been established withi the three years or within the year of assessment, they are to deal with by specified Rules or under Case 6—in either case on one year's receipt only. If the banks have only returned one year's receipts, the Commi sioners have no option under the Rules but to assess on one year's pa ments, and the banks must then deduct the assessment; but if the bank should, as they ought to do in regard to their customers' interests, retur the receipts of the three previous years, the Commissioners will have n option but to follow the language of the Statute and assess on the previou three years' average; if they do not, they will be striking the Rule in Case 5 out of the Statute. It is very likely more convenient for th Commissioners not to make too many enquiries as to whether there wer previous receipts. It is much simpler for them to deal with it on th one figure which the banks return; but the fact that when they only ge a return of one year they only assess on one year, which is quite i accordance with the Act, does not show in any way that the views whic I have previously expressed, which have been sanctioned by Parliament as to the three years' average applying to dividends from foreign share are in any way incorrect. The fact, therefore, is that the practice o the banks, assuming it to be exactly as stated by Counsel for the Appe lant, appears to me to have no bearing whatever on the true constructio of Case 4 and Case 5.

Two subordinate points were stated by Sir John Simon, but not mor than stated. They are these. It was said that in the Act of 1914, whe the Act provided that the tax should be assessed on the full amount o the income notwithstanding anything in the Rules under Case 4 an Case 5 in Section 100, it left out, and required everyone dealing with th case to leave out, that part of the Rules which dealt with average. I my view, the words of the Act itself "whether the income has been o "will be received in the United Kingdom or not" show that what Parlia ment was dealing with was the question of received income as dis tinguished from full income, and that there was no intention to strik out the rest of the Rules from the Act, which are alone the Rules unde which the Commissioners could proceed to assess at all.

The last point, which again was merely stated in a sentence withou being argued with any vigour or conviction by Sir John Simon, is that if part of the income that you are to form an average from fell befor the 6th April, 1914, you cannot bring it into the average on which yo are computing the income of 1916. "Nothing in these provisions sha "be construed so as to render liable under these Rules to Income Tax fo "the current year income which was paid or became due before the 6t "April, 1914." That, in my view, does not in any way preclude th income of the current year being computed, in the way provided, by a average of the three preceding years. You are not rendering that pre vious income liable for Income Tax in the current year; you are onl rendering the conventional income of the year 1916, or whatever the yea may be, liable in accordance with the Rules provided in the Act.

For these reasons I agree with the judgment proposed by my brothers and think the Appeal should be dismissed.

The Attorney-General.—The Appeal will be dismissed with costs?

The Master of the Rolls.—Yes.

Scrutton, L.J.—The Master of the Rolls has pointed out to me that in Lord Justice Warrington's judgment there appears to be a slip in the sentence in which he makes the last point with which I dealt in my own judgment—the point as to the three years' average. Lord Justice Warrington has treated the three years of average as being the year of assessment and the two preceding years. That must be a slip, as the Statute directs the three preceding years to be taken, and that sentence should be altered accordingly.

An Appeal having been entered from the decision of the Court of Appeal, the Case came on for hearing in the House of Lords on the 17th May, 1920, before Viscount Cave and Lords Atkinson, Shaw of Dunfermline, Wrenbury and Phillimore, when judgment was delivered unanimously in favour of the Crown, with costs.

Sir John Simon, K.C., and Mr. Edwardes Jones appeared for the Appellant, and the Attorney-General (Sir Gordon Hewart, K.C., M.P.), Mr. T. H. Parr and Mr. R. P. Hills for the Crown.

JUDGMENT.

Viscount Cave.—My Lords, this Appeal raises a question as to the mode in which the income from certain foreign investments should be assessed to Income Tax under the Income Tax Acts and Section 5 of the Finance Act, 1914.

The Appellant, who is domiciled or ordinarily resident in this country, is the holder of shares in an American corporation called the Singer Manufacturing Company of New Jersey. The dividends on these shares are not remitted to this country, but are placed to the credit of the Appellant in the United States. The Commissioners for the Romsey Division of the County of Hants, acting under the above-mentioned Section of the Finance Act, 1914, assessed the Appellant to Income Tax in respect of the year ending on the 5th April, 1916, in the sum of £80,000 (since reduced to £76,687), as being the profit received from the above shares on an average of the three years preceding the year of assessment. The Appellant objected to this assessment on the ground that on the true construction of the statutes he was not liable to be assessed on a three years' average, but only on the actual amount of dividend received in the year of assessment, namely £47,080. On an appeal to the High Court of Justice, the assessment made by the Commissioners was confirmed by Mr. Justice Sankey, whose decision was afterwards affirmed by the Court of Appeal. Thereupon this appeal was brought. In the course of the argument for the Appellant, reference was made to certain earlier statutes relating to Income Tax, which are now repealed. It appears to me that, for the purposes of this Case, no reliable inference can be drawn from the language of these statutes, and that the decision must depend on the construction of the Income Tax Act, 1842, as modified by later statutes.

By the Act of 1842 foreign income was made assessable under Schedule D of the Act, and fell either within the "fourth Case" of the Schedule as "interest arising from foreign securities" or within the "fifth Case" as "foreign possessions". The rules for assessment provided that in both cases the duty should be computed only on the amounts received in Great Britain;

and it was declared that in assessments falling under the fourth Case the duty should be computed on the sum received in Great Britain "in the "current year", that is, in the year of assessment, but that in those falling under the fifth Case the computation should be made "on an average of the "three preceding years". Under that Act, therefore, the mode in which the income was to be computed for the purpose of assessment was dependent on the nature of the property from which it was derived. If that property was a foreign security, the actual income for the current year was to be the basis of taxation; if it was a foreign possession of some other kind, the taxation was to be upon a three-year average, as in the first Case. By the Income Tax Act, 1853, some modification was made in the general words in Schedule D, and the tax was extended to Ireland; but it was provided by Section 5 of this Act that the regulations and provisions of the Act of 1842 (so far as consistent with the new Act) should continue to apply. Accordingly, it was held in *Colquhoun* v. *Brooks*(1) [(1889), L.R. 14 App. Cas., p. 493], that, notwithstanding the generality of the language in Schedule D of the Act of 1853, the tax on foreign income was still regulated by the fourth and fifth "Cases" in the Act of 1842, and was therefore leviable only on sums received in the United Kingdom.

It appears to have been found by experience that the limitation of the tax on foreign income to income received in the United Kingdom led to transactions by which the liability to tax was avoided; for it was within the power of a person resident in the United Kingdom to cause his foreign income or some part of it to be paid to his account abroad and invested or expended there, so that the liability to Income Tax should not attach to it. It was no doubt for this reason that the Legislature enacted Section 5 of the Finance Act, 1914, which, so far as material, provided as follows:— "Income tax in respect of income arising from securities, stocks, shares, "or rents in any place out of the United Kingdom shall, notwithstanding "anything in the rules under the fourth and fifth case in section one hundred "of the Income Tax Act, 1842, be computed on the full amount of the "income, whether the income has been or will be received in the United "Kingdom or not, subject in the case of income not received in the United "Kingdom to the same deductions and allowances as if it had been so "received . . . . . and the provisions of the Income Tax Acts (including "those relating to returns) shall apply accordingly . . . ." Then followed a saving Clause, to which I shall refer hereafter, and a proviso that the Section should not apply in the case of a person not domiciled or ordinarily resident in the United Kingdom. The effect of this enactment is plain. It abrogates, in respect of the four sources of income specified in the Section—namely, securities, stocks, shares, and rents—the limitation imposed by the earlier statutes and explained in *Colquhoun* v. *Brooks*, that is to say, that foreign income to be taxable must be received in the United Kingdom; but in other respects it leaves untouched the provisions of those statutes, including the division of foreign property into foreign securities and other foreign possessions and the distinction in the method of assessing the income accruing from those sources respectively. Accordingly, in cases falling within the Section, the interest from foreign securities must still be computed for the purpose of the tax on the amount received in the current year, while the profits from other foreign possessions must continue to be computed on a three-year average. It follows from the above summary that the main question to be determined in the present Case is whether the shares in the Singer Manufacturing Company of New Jersey, which are the subject of the assessment in dispute, are "foreign securities" within

(1) 2 T.C. 490.

Case 4 or "foreign possessions" within Case 5. If they are "foreign securities", then the assessment, which was made upon an average of three years, was wrongly made; but if not, they are clearly "foreign possessions", and in that case the assessment should stand.

My Lords, the normal meaning of the word "securities" is not open to doubt. The word denotes a debt or claim, the payment of which is in some way secured. The security would generally consist of a right to resort to some fund or property for payment; but I am not prepared to say that other forms of security (such as a personal guarantee) are excluded. In each case, however, where the word is used in its normal sense, some form of secured liability is postulated. No doubt the meaning of the word may be enlarged by an interpretation clause contained in a statute, as by the interpretation clauses in the Conveyancing and Law of Property Act, 1881, the Settled Land Act, 1882, the Trustee Act, 1893, and the Finance Act, 1916; or the context may show, as in certain cases relating to the construction of wills, (*In re Rayner*, L.R. [1904], 1 Ch., 176; *In re Grant & Eason*, L.R. [1905], 1 Ch., 336), that the word is used to denote, in addition to securities in the ordinary sense, other investments such as stocks or shares. But, in the absence of any such aid to interpretation, I think it clear that the word "securities" must be construed in the sense above defined, and accordingly does not include shares or stock in a company. In the present case there is no interpretation clause, and there appears to me to be no context which affects the ordinary meaning of the word "securities".

The combination in the fourth Case of the word "interest" with the word "securities" tells strongly in favour of a strict interpretation of the latter word; and the same combination reappears in Schedule G, Rule 10. The exception from the fourth Case of "such annuities, dividends and "shares as are directed to be charged under Schedule C of this Act" affords no argument to the contrary, as the dividends there referred to are plainly dividends on Government Annuities, and the "shares" are shares of such annuities. The context, therefore, so far as it goes, is in favour of the view that the shares of a foreign company are not "securities" within the meaning of the fourth Case, and accordingly fall within the fifth Case. This was so decided, in *Bartholomay Brewing Company* v. *Wyatt*(1) [L.R. (1893), 2 Q.B., 499], where Mr. Justice Wright said that "shares in "a company are not securities, but portions of its capital", and to the same effect is the dictum of Lord Justice Moulton in *Gramophone Limited* v. *Stanley*(2) [L.R. (1908), 2 K.B., 89] that "the holding of shares in a "foreign corporation entirely situated and carrying on business in a foreign "country falls unquestionably under Case 5". I see no reason for questioning those opinions, with which I fully agree. It was argued on behalf of the Appellant that a decision in favour of the Respondent would lead to an anomalous distinction between shares in foreign companies and shares in British companies, as, in the case of shares of the latter kind, tax is deducted under Section 54 of the Income Tax Act, 1842, from the dividend for each year; but it appears to me that any argument to be derived from Section 54 tells the other way. As pointed out by Lord Justice Warrington in the Court of Appeal, the shareholder in a British company pays, by way of deduction, a part of the tax paid by the company, and this has already been computed on the principle of average; while in the case of a foreign company the profits of the company cannot be charged at all and the tax falls for the first time on the income of the shareholder. This being so, a closer analogy is established between the two cases by applying the

(1) 3 T.C. 213. (2) 5 T.C. 358.

principle of average to the dividends on foreign shares than by taxing the dividend for each year.

Counsel for the Appellant also relied upon certain provisions contained in Section 10 of the Income Tax Act, 1853, and in some later statutes, [*See* Revenue (No. 2) Act, 1861, Section 36 and Customs and Inland Revenue Act, 1885, Section 26], which require bankers and others entrusted with the payment of foreign dividends to persons in the United Kingdom to pay to the Revenue authorities the tax on such dividends as assessed by the Commissioners under Schedule D, charging the amounts so paid to the persons entitled to the dividends in question. They pointed out that paying agents of the character described have generally no materials for arriving at an average of the dividends receivable by any particular shareholder, and accordingly must and do pay and deduct tax at the current rate in respect of the amounts actually received in the year of assessment, without reference to any average, and they contended that these enactments and the practice followed in carrying them into effect throw a light on the construction of the Act of 1842 and the meaning of the word "securities" therein contained. My Lords, it may be that the practice is as stated. No doubt it is convenient, and in the long run inflicts no injustice upon the shareholders concerned, but I am not satisfied that it is in strict and technical accordance with the enactments in question. It does not appear to me that it would be beyond the power of the Commissioners, who are required by the statutes to determine the sums to be deducted, to proceed by way of average, and, however this may be, I am unable to see how the fact that, upwards of ten years after the passing of the Act of 1842, special machinery was provided for collecting in a limited class of cases the tax thereby imposed can alter the general liability of the taxpayer as between himself and the Crown or affect the construction of the earlier Act of 1842. Indeed, any weight which might otherwise be given to these provisions as a parliamentary construction of the earlier Statute is overborne by the considerations (1) that in Section 10 of the same Act of 1853 the "stocks, funds or shares" of a foreign company are clearly distinguished from the "securities given by or on account of any such company"; (2) that in Section 5 of the Finance Act, 1914 (which was passed after the above cited decisions as to the meaning of the word "securities") stocks and shares are referred to as something distinct from securities; and (3) that in the Schedule to the Income Tax Act, 1918, the consolidating Statute now in force, stocks and shares are classified as coming under Case V and not under Case IV. An argument was founded on the direction contained in Section 5 of the Act of 1914 that the tax should be computed on the "full amount" of the income, whether received in the United Kingdom or not; and it was suggested that the expression "full amount" there used meant the actual income for the year. But the expression "full amount" is found in the rules relating to Case V in the Act of 1842 as well as in other parts of the Income Tax Acts; and no inference can be drawn from the use of the same expression in Section 5 of the Act of 1914.

A last argument was founded upon the saving Clause contained in Section 5. That Clause, which immediately follows the direction (above set out) that the provisions of the Income Tax Acts shall apply, is as follows:—"and nothing in those provisions as to the receipt of sums in the "United Kingdom shall be construed so as to render liable under those "rules to income tax for the current or any subsequent year any sums "which represent . . . . . (*b*) income from any such securities, stocks, "shares, or rents which was paid or became due before the sixth day of "April, nineteen hundred and fourteen." It was contended that, if the tax is computed upon an average of three years preceding the financial year

1915–1916, such computation must include income which was paid or became due before the 6th April, 1914, and accordingly is an infringement of paragraph (*b*) of the above Clause. It appears to me that this argument rests upon a misunderstanding of the provision in question. The enactment is that "nothing in those provisions" (that is to say, in the provisions of the Income Tax Acts) "as to the receipt of sums in the United Kingdom "shall be construed so as to render liable under those rules to income tax "for the current or any subsequent year" income which was paid or became due before the duty was imposed in the new form; and the object appears to be to protect the taxpayer from being liable to a double tax, namely, the tax under the new Act on all foreign income of the nature described, and the tax under the earlier statutes on similar income accrued before the date mentioned and remitted after that date to the United Kingdom. It has no reference to the computation of income for the purposes of Section 5 of the new Act.

For the above reasons it appears to me that the dividends in question were properly assessed upon an average of three years, and accordingly that this appeal fails and should be dismissed with costs.

Lord Atkinson.—My Lords, I concur. Schedule D of the Act of 1842 treats the interest arising from "securities" upon which Income Tax is to be charged as something, if not different in kind, at all events different in the mode in which it is to be measured for the purpose of this tax, from the income arising from "foreign possessions". The first question for decision, therefore, is:—Are shares in a manufacturing company, like shares in those companies which carry on their business in the United States of America, "securities" or "foreign possessions" within the meaning of the Income Tax Acts of 1842 or 1853? Now, shares in such a company are portions of the capital of the company. The company carries on its manufacture in factories built on American soil for the benefit of its shareholders. The net profits made by those operations are divisible in whole or in part amongst those shareholders. These profits are, as it were, the fruit of the tree planted on American soil, and, should the company be wound-up, if its assets were more than sufficient to discharge all its debts and liabilities, the overplus would be divisible amongst its shareholders. A share in such a company resembles a *chose in action* in this respect, but in this respect only, that it is assignable and the assignee would be entitled to sue upon it to obtain his appropriate share of the net profits just as the original holders would be. In my opinion, therefore, shares in such a company are "foreign possessions" within the meaning of the Fifth Case, Schedule D of the Income Tax Act of 1842, rather than securities within the "Fourth Case". In popular language, shares such as these may sometimes be described as securities, and the context in wills and other instruments in which the word "securities" is found may show that the word was used to include shares in companies.

In *Colquhoun* v. *Brooks* (1) (14 A.C. 493) the matter dealt with was the "income derived by the Respondent who was resident and domiciled in "England from a trading firm carrying on a business in Australia in which "firm he was a partner", not a shareholder. In that respect the Case differs from the present, but the reasoning upon which the judgments of Lords Herschell and Macnaughten were based applies, I think, to the present Case. At page 508(2) of the Report, Lord Herschell said:—"Now the word "'possessions' is not used in the part of Schedule D which describes the "subjects of the tax. Speaking generally they are defined to be profits "arising from property and those arising from trades and professions; when

(1) 2 T.C. 490. (2) 2 T.C. at p. 502.

"therefore the word 'possessions' is employed it seems to indicate an "intention to cover more than 'property' and it is difficult to see why, "unless the intention were to embrace something more, the latter word was "not used. 'Possessions' is a wide expression; it is not a word of "technical meaning; the Act supplies no interpretation of it. I cannot "see why it may not fitly be interpreted as relating to all that is possessed "in His Majesty's Dominions outside the United Kingdom or in foreign "countries which is a source of income. And, if so, I do not think any "violence would be done to the language if it were held to include the "interest which a person possesses in a business carried on elsewhere."

It would appear to me that these last words apply to a shareholder in a foreign manufacturing company equally with a partner in a foreign firm engaged in commerce.

Lord Macnaghten at p. 516(1), after reviewing the earlier legislation of this subject of Income Tax, said:—"Turning now to the 'fifth case', "I ask why are not the Respondent's profits and gains from his Melbourne "business within the 'fifth case'? What is the meaning of the term "'possessions' in that Case? The word 'possessions' is not a technical "word. It seems to me that this is the widest and most comprehensive "word that could be used. Why, for instance, should 'possessions' in "Ireland not mean everything, every source of income that the person has "in Ireland whatever it may be . . . . . I use the expression 'source of "income' because it is as a 'source of income' that the Act contemplates "and deals with property, and everything else that a person chargeable "under the Act may have, and the Act itself in Section 52 uses the "expression 'sources' chargeable under the Act, and 'all sources contained "'in the several Schedules' as describing everything in respect of which "the tax is imposed."

This Case was decided in 1889, twenty-five years before the Act of 1914 was passed, and it was held in it that the Respondent's portion of the profits of his foreign firm not received in the United Kingdom was not liable to Income Tax, but that the portion of those profits which was received in the United Kingdom and was, because of that, subject to Income Tax, which had to be computed on an average of the three years as directed in the first Case of Schedule D. is, "on a sum not less than the "full amount of the balance of the profits and gains of the trade, manu- "facture, or concern mentioned on a fair and just average of three years "ending on such day of the year immediately preceding the year of assess- "ment on which the accounts of the said trade, manufacture, adventure, or "concern shall have been usually made up, or on the fifth day of April "preceding the year of assessment." By the 5th Section of the Finance Act, 1914, Income Tax in respect of income arising from securities, or from something treated as other than securities, namely, "stocks, shares or rents", is to be computed on the full amount of the income, whether the income has been or will be received in the United Kingdom or not, subject in the case of income not so received to the same deductions and allowances as if it had been received, and also subject to the other deductions named.

It was urged on behalf of the Appellant that, owing to the provisions of certain of the machinery or collecting sections of the Act of 1842, it would be quite impossible to make the computation directed to be made where the Income Tax was to be levied on the full amount of the income under the 5th Section of the Act of 1914. There may be some difficulty in applying these Sections to such a case, but I am not at all convinced that it exceeds to a substantial degree, if at all, the difficulty of applying them to cases where only the portion of the income received in the United Kingdom was subject to the tax. The provisions of the Income Tax Act

(1) 2 T.C. at p. 508.

relating to returns are made applicable to the former case as they always have been to the latter, and the receiver of the income in such a case will be under the same obligation to make those returns as he was when only a portion of his income was received in the United Kingdom. By the first provisions of this Section 5, income from any securities, stocks, shares or rents on which Income Tax has been paid under the Section, or which was paid or became due before the 6th April, 1914, was not to be rendered liable under the rules to Income Tax for the current or any subsequent year. But though Income Tax cannot be levied on such sums of income as these, there is nothing to prevent them being taken into account in fixing the fair and just average of the income for three years as required by Schedule D, Case V and Case I.

Sir John Simon urged, as I understood him, that in the present instance to take the profits and gains received by the Appellant in the year 1913 for the purpose of arriving at this average would amount in effect to taxing them. I do not think this is so. For instance, if the income accruing to the Appellant in that year was very small, the taking it into account for the purpose of averaging would reduce the income to be taxed in the year 1916 much below what was actually received. Where the income from any source is variable in amount from year to year, the taking of the three years' average of it is in relief of the taxpayer rather than the contrary.

In my view, the decision of the Court of Appeal was right on both points. I, therefore, think that the Appeal should be dismissed with costs here and below.

Lord Shaw of Dunfermline.—My Lords, I agree. The Appellant is ordinarily resident in the United Kingdom. He receives certain income in this country "as a shareholder in an American Corporation, *i.e.*, the Singer "Manufacturing Company of New Jersey in the United States of America". The simple question in the Case is whether the income consisting of the dividends so received falls within the Fourth Case or the Fifth Case of Schedule D of the Income Tax Act of 1842. In other words, does this income fall under the denomination of "interest arising from . . . foreign "securities", or under the Fifth Case, "in respect of . . . foreign "possessions"?

Possession is a wide generic term. It comprehends all that a man possesses, and, whether it be the shares of the Singer Company or the dividends received from those shares, it is no doubt true that the word "possessions" would cover them. "Foreign possessions" in this wide generic sense would cover "foreign securities" also but for the fact that the Statute under construction has enumerated foreign securities as a different Case, and one to be treated on different principles from the case of foreign possessions. Foreign securities, so to speak, are cut out of the comprehensive term and made to stand by themselves in a different and separate category.

The word "securities" has no legal signification which necessarily attaches to it on all occasions of the use of the term. It is an ordinary English word used in a variety of collocations; and it is to be interpreted without the embarrassment of a legal definition and simply according to the best conclusion one can make as to the real meaning of the term as it is employed in, say, a testament, an agreement, or a taxing or other statute as the case may be. The attempt to transfer legal definitions derived from one collocation to another leads to confusion and sometimes to a defeat of true intention. Of these two things, accordingly, "foreign possessions" and "foreign securities", which of the two terms fits the case of the shares in the Singer Company of New Jersey? A security means a security upon

something. Securities, in the present instance, being in contrast with, or separation from, possessions, cannot be taken as the same word would be taken if applied, for instance, to the lodging by a customer of securities with his bank; in which case the term would naturally apply to the scrip which he hands over the counter. Securities in the Fourth Case of Schedule D appear to me to mean securities upon something as contrasted with the possession of something. The term involves the idea of the relation of creditor with debtor, the creditor having a security over property, concern, assets, goods or other things, which are, so to speak, put in pledge by the debtor and form the security for the fulfilment of his obligation to the creditor. This is not the position of Mr. Singer's title. He is a shareholder. The relation between him and his fellow shareholders is not that of creditor with debtor but of partner or joint adventurer with the other shareholders. His relation with the company is that of part owner of the concern. The property which he so holds falls, in my opinion, accordingly, as a matter of construction, under the term "possessions" and not under the term "securities". The remarks of Mr. Justice Wright in *Bartholomay Brewing Company* v. *Wyatt*, (1) and of Lord Justice Moulton in *Gramophone Ltd.* v. *Stanley* (2) may, as was argued, have been *obiter*, but I am humbly of opinion that they were entirely sound.

The practical results, my Lords, of this view seems to confirm it completely. For in practice the return from securities is in the general case a fixed and certain return; whereas in practice the income or dividends derived from shares is or may be in the general case variable and uncertain, depending as it does upon the rise or fall of the fortunes of the business. To the former, *i.e.*, securities with a fixed return, the principle of averaging up one year with another is not in place; whereas to the latter, the case of variable returns from possessions, the principle of averaging up during a course of three years naturally applies. I think the statute meant in this practical way to have the assessment proceed, and the distinction of the case of securities taxed year by year as the fixed income comes in, from the case of possessions taxed upon the average of the variable return, follows the line of incidence which the Legislature of set purpose meant to pursue. In my opinion that purpose was sufficiently accomplished by the distinction between the two Cases, and, I may add that I am not satisfied that in the working out of the Statute there may be produced such difficulties as were conjectured in argument, and these would need, in my opinion, to be shown to be well nigh insuperable before they could affect the interpretation of the Act.

Lord Wrenbury (read by *Lord Atkinson*).—My Lords, I agree. I desire only to add a few words as to the meaning of the expressions "securities" in Case IV, and "Foreign Possessions" in Case V of Schedule D, for it is on the meaning of these words that the decision of this Case depends.

A security, I take it, is a possession such that the grantee or holder of the security holds as against the grantor a right to resort to some property or some fund for the satisfaction of some demand, after whose satisfaction the balance of the property or fund belongs to the grantor. There are two owners, and the right of the one has precedence of the right of the other. A share in a corporation does not answer the above description. There are not two owners, the one entitled to a security upon something and the other entitled to the balance after satisfying that demand. A share confers upon the holder a right to a proportionate part of the assets of the corporation; it may be a proportionate part of its profits by way of dividend, or it may be a proportionate part of its distributive assets in liquidation. There is

(1) 3 T.C. 213. (2) 5 T.C. 358.

no owner other than himself. These meanings must no doubt yield to any inference to be drawn from the context in which the expression occurs, and necessarily to any express definition such as that in Section 27 (7) of the Finance Act, 1916. Here there is no such context or definition. Our attention has been drawn to provisions in the Acts which no doubt render it difficult or laborious to ascertain the three year average in the case of shares in a foreign corporation. They are not, I think, sufficient to affect that which is the meaning of the word "securities" as I have stated it.

I think the Appeal fails.

Lord Phillimore.—My Lords, I agree. This is not a question of the liability to tax, but solely of the measure by which the taxable income of the Appellant for the year in question is to be ascertained; whether the source of income for which it is proposed to tax the Appellant is to be considered as interest arising from foreign securities, in which case it is to be computed as that which has been or will be received in Great Britain in the current year, under the Fourth Case of Schedule D, or whether it comes under the Fifth Case as income from foreign possessions, in which case it is to be computed on an average of the three preceding years.

In common with the rest of your Lordships, I attach no importance to an argument which was based on the language of the Act which brought this income within the sphere of taxation, that is, Section 5 of the Finance Act of 1914. The object of that Act is to make persons resident in this country taxable on their income arising from securities, stocks, shares, and rents in any place out of the United Kingdom, whether the income has been or will be received in the United Kingdom or not. As regards such income when received out of the United Kingdom, it is to be taxed in future in the same way as if it had been received in the United Kingdom, that is, according to the same measure. If, supposing, it had come into this country it would have been taxable under the Fifth Case, it not coming into this country is taxable under the same Case; and the measure which would have to be applied, if the dividends on Singer's shares in the Singer Company had been remitted to the Appellant in this country, instead of being retained in the United States, is the same as the measure applicable to this Case. The contention on behalf of the Surveyor is based upon a strict construction of the language of Cases IV and V. The argument on behalf of the Appellant rests upon the anomalies which such a construction would produce, and also partly upon an inference from certain statutes with regard to the payment of Income Tax by persons entrusted with payment in England of dividends on the shares in foreign companies.

The first suggested anomaly is that, whereas in respect of companies in the United Kingdom the shareholder pays the Income Tax appropriate to the particular dividend, which is usually, though not always, deducted by the company before payment, and so pays Income Tax upon the actual sum he receives yearly; the holder of shares in a foreign company will, if he comes under the Fifth Case, pay on a computation of the average of the three preceding years. It is true that the effect of this will be that the measure of Income Tax paid on dividends from companies outside the United Kingdom, will year by year be different from the measure of Income Tax paid or borne on dividends declared by companies in the United Kingdom. But a British company, taken as a corporate entity, does pay Income Tax like any other trader upon a notional annual income arrived at by computing the average of its profits for the three preceding years, and the method by which this Income Tax is in turn transferred to the shareholder is that provided by Section 54 of the Act of 1842, which provides that there should be allowed out of the dividends which it pays "a proportionate deduction in respect of the duty so charged". A foreign

company, which does not pay the British Income Tax in its corporate capacity, makes no such proportionate deduction: and it is not unreasonable that when the shareholder comes to pay, instead of having his tax deducted at the source, he should pay upon the three years' average as being a shareholder in a trading concern.

The next anomaly arises in this way. By the Income Tax (Foreign Dividends) Act of 1842, every person entrusted with the payment of annuities, or dividends, or shares of annuities out of the Revenue of any foreign State has to deliver an account to the Commissioners for Special Purposes, who will make an assessment on such person under Schedule C. He is then authorised to pay the Income Tax and deduct it from the payment which would have to be made to the investor. By Section 10 of the Income Tax Act, 1853, these provisions are extended to the assessing and charging under Schedule D of the duties on all interest, dividends, or other annual payments, payable out of or in respect of stocks, funds, or shares of any foreign company, and there is subsequent legislation which carries the matter somewhat further in the same direction. It is said, as it seems to me correctly, that the person entrusted, who is to make his return, will make his return yearly, and will return for assessment and tax the interest or dividends accruing to his principal for that year and will deduct from the sum he pays to his principal the tax of that year, and that there will be no question of average, and, therefore, that where the Act of 1853 or subsequent similar legislation applies, the measure will be that applicable to the Fourth Case, and not that applicable to the Fifth. As I have said, it appears to me that this contention is right. The argument then proceeds:— If this be so, and yet the contention of the Commissioners is right for a case where dividends are paid direct to the shareholder and not to a person entrusted, the mere difference of machinery will make a difference in the measure. Having arrived at this conclusion, then you must admit, it is said, that a difference in the mode of payment, which the company and perhaps the shareholder can make at pleasure, will make a difference in the measure by which the tax is to be computed, with a result which may be injurious to the Revenue. Then the argument concludes:—Either this shows that the true meaning of the word "securities" in the Fourth Case is such as to include under it stocks, funds, and shares or, whatever might otherwise be deemed to be the meaning, the Act of 1853 has put a statutory construction upon this word.

My Lords, there is force in this argument, and at one time I was a good deal swayed by it, but I think it is not strong enough. The result may well be that the anomaly exists that there are two measures, one applicable where the shareholder receives his foreign dividends direct, and one applicable when there is a person entrusted by the company with the payment of dividends. The result is strange, but not impossible, and the arguments for the Appellant being exhausted, I turn to the arguments for the Surveyor. They are derived from the actual language. I have not been myself much impressed by the word "securities". No doubt the proper meaning is that which has just been given by the noble and learned Lord, Lord Wrenbury. No doubt also the Court of Chancery has construed the word "securities" when it appears in the instrument creating the trust, as confined to securities in the strict sense of the word, unless there should be other words in the instrument showing that the creator of the trust had attached to them a different meaning. But then it must be remembered that the Court of Chancery started with the view that there was only one investment open to trustees, that is in Consolidated Bank Annuities; that even investments in other government stocks, such as Reduced 3 per cent. or New 3 per cent., were only gradually and somewhat grudgingly admitted,

and that thenceforward, as from time to time the area of trustees' investments has been extended, either by the private instrument or by Act of Parliament, the Court has always looked on each new investment as having the duty of making good its title to admission. In a popular sense the word "securities" includes, I think, nowadays the scrip of stocks and shares. It may be said that this sense is a loose one, but so I think is the word "possessions" used in the Fifth Case. To me "possessions" would mean something tangible. Possessions abroad would mean such things as a sugar plantation or bales of goods, and I should distinguish *choses in possession* from *choses in action*, and include in the latter stocks and shares carrying dividends as well as all interest-bearing debts. But there is high authority for saying that the word "foreign possessions" in the Fifth Case includes any form of property from which profit can be derived, and would indeed include property coming under the Fourth Case, if it had not been specifically cut out from the larger mass. Perhaps the real explanation is that in 1842 there were few incorporated companies, fewer which were foreign companies, and fewer still which were foreign companies having shares owned in Great Britain, so that, while the Legislature has used language which has been construed as wide enough to include all foreign species of property, what were principally in mind at the time were investments in lands, or in plantations or factories abroad. Accepting then the argument of the Crown that the Fifth Case deals with the mass and the Fourth Case with the excepted body only, I am impressed in the Fourth Case not so much by the word "securities" as by the words "interest "arising from securities". Even there the language is not very clear. The words run, "The duty to be charged in respect of interest arising "from securities in the British plantations in America or in any other of "her Majesty's dominions out of Great Britain and foreign securities, with "the exception of annuities . . . charged under Schedule C." Do these words mean the duty to be charged in respect of interest arising from foreign securities, or do they mean the duty to be charged in respect of foreign securities? It might be hard to say; but the matter is cleared up by Schedule G, Rule 10, where the phrase used is "every person receiving "in Great Britain interest from securities out of Great Britain," while Rule 11 speaks of "every person receiving in Great Britain profits from "possessions out of Great Britain." Reading the language of the Fourth Case by the construction put upon it by these Rules, I can have no doubt that the Fourth Case is limited to securities in the narrower and technical sense, and that these shares are not such securities, and are to be assessed on the three-yearly average, and that the decision of the Court of Appeal is right and should be confirmed.

Questions put:

That the Order appealed from be reversed.

The Not Contents have it.

That the Order appealed from be affirmed and this Appeal dismissed with costs.

The Contents have it.

VOL. XVI.—PART IV.

No. 799.—High Court of Justice (King's Bench Division).—18th and 19th March, 1931.

Court of Appeal.—13th and 14th May, 1931.

F. H. Hamilton *v.* The Commissioners of Inland Revenue.(1)

Sur-tax—Dividend paid by company exceeding in amount the "statutory" income of the company for the relative period—Whether liability of shareholder to Sur-tax extends to full amount of dividend.

The Appellant was the holder of shares in a limited company which, during the year 1928–29, paid dividends exceeding in amount the income of the company, as computed for Income Tax purposes, for the periods in respect of which the dividends were declared. The dividends were paid under deduction of Income Tax at the standard rate. On an appeal against an assessment to Sur-tax, which included the full amount of the dividends, he contended that his income from the company, for Sur-tax purposes, could not exceed the proportion received by him of the company's "statutory income" for the relative periods (i.e. *the total amounts on which the company had borne or been liable to Income Tax by deduction or direct assessment, less the amount of interest or other annual payments on which it had recovered tax by deduction*).

Held, *that the full amount of the dividends was properly included in the assessment to Sur-tax.*

Gimson *v.* The Commissioners of Inland Revenue *distinguished.*(2)

Case

Stated under the Finance Act, 1927, Section 42 (7), and the Income Tax Act, 1918, Section 149, by the Commissioners for the Special Purposes of the Income Tax Acts for the opinion of the King's Bench Division of the High Court of Justice.

1. At a meeting of the Commissioners for the Special Purposes of the Income Tax Acts held on 23rd October, 1930, for the purpose of hearing appeals, Mr. Frederick Howard Hamilton, hereinafter called the Appellant, appealed against an assessment to Sur-tax in the sum of £35,805 for the year ending 5th April, 1929, made upon him under the provisions of the Income Tax Acts.

(1) Reported (C.A.) [1931] 2 K.B. 495. (2) 15 T.C. 595.

2. The Appellant was the holder of 67,500 shares out of a total issue of 150,000 shares of £1 each in the Transvaal Agency, Limited, a company incorporated in England under the Companies Acts (hereinafter referred to as " the company ").

3. In making his return of his total income for the year in question for the purposes of Sur-tax, the Appellant included a sum of £27,000 in respect of dividends from the company, made up of a dividend of 10 per cent., or £6,750 gross, payable on 30th June, 1928, out of the profits for the year to 30th June, 1927, and a dividend of 30 per cent., or £20,250 gross, payable on 12th February, 1929, out of the profits for the year ended 30th June, 1928. At the time of making this return, the Appellant made application for relief under Section 34 of the Finance Act, 1927, on account of the income from the shares of the company received in the year being attributable to a period exceeding a year. This application was granted, and the assessment under appeal was made in accordance with the Appellant's return, but subject to an appropriate measure of relief under the said Section 34 of the Finance Act, 1927, *viz.*, the allocation of the dividend paid on the 30th June, 1928, to the Super-tax year 1928–29.

4. The Appellant appealed against the assessment on the ground that he had made an error in including in his return the full amount of the dividends declared by the company in respect of his shares, inasmuch as the total sums distributed by the company by way of dividend in respect of the years ending 30th June, 1927, and 30th June, 1928, respectively, exceeded the " statutory income " of the company for those years (*i.e.*, the total amount on which the company had borne or been liable to Income Tax by deduction or direct assessment, less the amount of interest or other annual payments on which it had recovered tax by deduction) and he was now advised that his income from the company for the purposes of Sur-tax could not exceed that proportion of the company's statutory income which had been received by him.

5. The company received a substantial income from dividends and interest on investments, on which it suffered tax by deduction, and it paid considerable amounts of annual interest under deduction of tax. It also received some fees, assessable under Schedule E, and engaged in trading operations the profits from which were assessable under Case I of Schedule D. The profits or losses arising from these trading operations, as adjusted for the purposes of Income Tax, were as follows :—

Year ending 30th June,	1925	... Loss of £2,387.
" " " "	1926	... Loss of £4,268.
" " " "	1927	... Profit of £16,797.
" " " "	1928	... Profit of £39,274.
11 months ending 31st May,	1929	... Loss of £2,699.

On 31st May, 1929, the company sold its business and went into liquidation.

6. For the year ending 5th April, 1927, the assessment on the company under Case I of Schedule D was nil, as on the average of the preceding three years its trading operations had resulted in a loss. For the years 1927–28 and 1928–29 Section 29 (3) of the Finance Act, 1926, was applied and the average of the three preceding years was taken as the basis of assessment in lieu of the profits of the preceding year. For 1927–28 the result on average was again a loss, and the assessment under Case I of Schedule D was nil. For 1928–29 an assessment was made in the first instance in the sum of £3,381, being the average of the three years ending 30th June, 1927, but in consequence of the sale of the company's business on 31st May, 1929, an additional assessment of £3,643 for 1928–29 was subsequently made under Section 31 (1) (*b*) of the Finance Act, 1926, increasing the amount on which the company was charged under Case I of Schedule D to £7,024, a figure arrived at by deducting approximately 9/11ths of the loss of £2,699 for the 11 months ending 31st May, 1929, from approximately one-fourth of the profit of £39,274 for the year ending 30th June, 1928. For the period beginning 6th April and ending 31st May, 1929, there was no liability by reason of the operation of Section 31 (1) (*a*) of the Finance Act, 1926.

7. The gross amounts on which the company was charged to tax by deduction or direct assessment were £18,140 for the year ending 5th April, 1927, £17,774 for the year ending 5th April, 1928, and £25,284 (including the above-mentioned assessment of £7,024 under Case I of Schedule D) for the year ending 5th April, 1929. It paid interest amounting to £4,543 for 1926–27, £3,953 for 1927–28 and £6,205 for 1928–29, so that the amounts on which, prior to the payment of dividends, the company in fact bore and was chargeable to tax (referred to by the Appellant as its "statutory income") were £13,597 for the year ending 5th April, 1927, £13,821 for the year ending 5th April, 1928, and £19,079 for the year ending 5th April, 1929.

8. For the year ending 30th June, 1927, the company made a commercial profit as shown in its profit and loss account of £27,436 17*s*. 2*d*. which, with a carry forward of £7,590 19*s*. 8*d*. from the previous year, brought the balance standing to the credit of profit and loss account in the balance sheet at that date to £35,027 16*s*. 10*d*. For the year ending 30th June, 1928, the company made a commercial profit of £48,702·13*s*. 6*d*., which, with the addition of the carry forward from the previous year brought the total amount carried to the appropriation account to that date to £83,730.

9. The question of the payment of a dividend was considered by the directors of the company on 29th June, 1928, before the accounts for the year ending on the following day had been made up, and it was resolved to pay an interim dividend of 10 per cent. less Income Tax on the 30th June, 1928, in respect of the year ending 30th June, 1928. This resolution was reconsidered and modified at a meeting

10634) Wt. 242-1302 2386 5000 7/32 Hw. G.14 (T.S. 1766). A 2

of the directors held on 19th November, 1928, when it was resolved that the dividend so declared should be treated as a distribution out of the profits for the year to 30th June, 1927. The declaration as thus modified was approved and confirmed at the annual general meeting of the company held on 12th February, 1929, and at the same meeting it was resolved that a dividend of 30 per cent. less Income Tax be declared in respect of the year ended 30th June, 1928. Copies of the resolutions of the directors and the company in regard to these dividends are attached hereto and form part of this Case.(1)

10. The gross amounts of the profits absorbed by the payment of these dividends were £15,000 for the year to 30th June, 1927, and £45,000 for the year to 30th June, 1928.

11. If the " statutory income " of the company, as set out in paragraph 7 above, for the three years ending respectively 5th April, 1927, 5th April, 1928, and 5th April, 1929, were apportioned on a time basis to the company's own years of account, the company's " statutory income " for the years ending respectively 30th June, 1927, and 30th June, 1928, would be calculated approximately as follows :—

Year to 30th June, 1927 :—

3/4ths of £13,597 (statutory income of year to 5th April, 1927)	£10,197
1/4th of £13,821 (statutory income of year to 5th April, 1928)	£3,455
Total	£13,652

Year to 30th June, 1928 :—

3/4ths of £13,821 (statutory income of year to 5th April, 1928)	£10,365
1/4th of £19,079 (statutory income of year to 5th April, 1929)	£4,770
Total	£15,135

12. On 30th June, 1928, a warrant or cheque for £5,400 was forwarded by the company to the Appellant, accompanied by a certificate in compliance with the provisions of Section 33 of the Finance Act, 1924, showing the gross amount of the dividend paid to him as £6,750 and the amount of tax deducted at 4*s*. in the £ as £1,350. Similarly, on 13th February, 1929, a warrant or cheque for £16,200 was forwarded by the company to the Appellant, accompanied by a certificate showing the gross amount of the dividend

(1) Not included in the present print.

paid to him as £20,250, and the amount of tax deducted at 4s. in the £ as £4,050. Copies of these certificates are attached hereto and form part of this Case.(1)

13. The amounts included in respect of these dividends in the Appellant's return of total income and in the assessment made upon him to Sur-tax were the gross amounts shown in the above-mentioned certificates. The Appellant now claimed that there should be substituted 67,500/150,000ths of the amounts of £13,652 and £15,135 set out in paragraph 11 of this Case, or of amounts approximating thereto.

14. The Appellant has made a claim against the liquidator of the company for repayment of Income Tax which he alleges was deducted from the dividends in excess of the amounts which the company was entitled to deduct. This claim has not yet been dealt with by the liquidator.

15. Copies of the balance sheets and profit and loss accounts of the company for the years to 30th June, 1927, and 30th June, 1928, respectively, the profit and loss appropriation account covering the period from 30th June, 1928, to the date of liquidation, and of statements showing the fees receivable and assessable under Schedule E, the annual interest receivable and payable, and the dividends receivable by the company from 1st July, 1925, to 31st May, 1929, and the calculation of the company's "statutory income" from all sources for the fiscal years 1926–27, 1927–28 and 1928–29 are attached hereto and form part of this Case.(1)

16. It was contended on behalf of the Appellant :—

(a) That under Rule 20 of the General Rules applicable to all Schedules of the Income Tax Act, 1918, a company is treated in the same way as an unincorporated body of persons. In both cases the profits or gains of the body of persons are charged on the body as a whole, and when those profits or gains are distributed among the constituent members no fresh income arises, no further assessment to Income Tax can be made, and the body cannot deduct more tax or inflict on its members any liability to tax in excess of what it has itself suffered.

(b) That Rule 21 of the General Rules is not applicable to the dividends of a company.

(c) That Section 5 (3) of the Income Tax Act, 1918, Section 33 of the Finance Act, 1924, and Section 39 of the Finance Act, 1927, are merely machinery affecting the date at which income is to be taken into account in computing the total income of individual members and the rate of deduction of Income Tax and do not affect the amount to be included by the members in their returns of total income.

(1) Not included in the present print.

(*d*) That the amount on which the company or other body of persons is charged to Income Tax is the maximum amount distributable as income among the members, and that the amounts returnable by the individual members in their statements of total income for the purposes of Sur-tax or reliefs or repayments cannot exceed their respective shares of the total amount on which the body of persons is charged to Income Tax.

(*e*) That the case was concluded by the decision in the case of *Gimson* v. *Commissioners of Inland Revenue*.(1)

17. It was contended on behalf of the Crown, *inter alia*:—

(*a*) That the company in distributing its profits was entitled to deduct and had in fact deducted tax at the standard rate on the gross amount of the dividends paid and that the Appellant was bound to allow the said deduction.

(*b*) That the gross amount of the dividends from which tax had been so deducted was properly included in the Appellant's return of his total income for the purposes of Sur-tax.

(*c*) That the case of *Gimson* v. *Commissioners of Inland Revenue* was distinguishable.

(*d*) That the assessment was correct and should be confirmed.

18. We, the Commissioners who heard the appeal, gave our decision in the following terms:—

"Apart from the decision in *Gimson's* case, we should not feel any doubt or difficulty about this case. The company has in the ordinary course paid dividends out of its annual profits or gains, which consisted partly of trading profits and partly of interest and dividends taxed by deduction, and which fell wholly within the charge to Income Tax. In paying these dividends the company has, as it was entitled to do according to the words of Rule 20, deducted the tax appropriate thereto, which is defined by Section 39 (1) of the Finance Act, 1927, as tax at the standard rate for the year in which the amount payable became due. A shareholder in making his return of total income for that year would naturally include 'the gross amount which, after deduction of the Income Tax appropriate thereto, corresponds to the net amount actually paid', as shown on the counterfoil of the dividend warrant issued in compliance with Section 33 of the Finance Act, 1924. If such total income was shown to be less than the amount involving him in liability to Income Tax, he would be able to obtain repayment of the tax deducted without any question; if the total income exceeded £2,000 he would be charged Sur-tax accordingly, and on the face of it there would be no grounds for disputing the charge.

(1) 15 T.C. 595.

It is however contended that this case is governed by the reasoning in *Gimson's* case, and that on examination of the company's Income Tax liabilities it will be found that the amount to be included in the computation of the shareholder's total income for the purpose of repayment or Sur-tax is not the gross amount of the dividends received by him, but is limited to his aliquot proportion of the company's 'statutory' income, or total income from all sources as measured by aggregating the amounts on which the company has borne tax by deduction or by direct assessment for the year, or portions of years, of assessment in which the profits distributed were made.

The case of *Gimson* was treated as involving a point which may not often arise in practice, and it related to a distribution, without deduction of tax or any expression that the payment was free of tax, of a fund consisting of realised capital profits and other profits which were assumed to have entirely escaped liability to Income Tax by reason of the operation of the Rules for the measurement of assessments. We do not think that the decision was intended to apply to the ordinary case of a distribution, under deduction of tax, of dividends out of the annual profits of a company, or to disturb the general practice in regard to the treatment of such dividends for the purposes of repayment, Super-tax or Sur-tax. As a consequence of the system of measuring assessments by the results of a previous period, the assessments of a company seldom correspond in amount, even approximately, to the profits of the year of assessment which are taxed by those assessments, and it is not uncommon for the profits available for distribution by way of dividend to exceed the amount of the assessments (or of the proportions of such assessments if the company's accounting period does not coincide with the Income Tax year) for the period in which the profits were made. Nevertheless it is, and always has been, the almost universal practice to deduct from the gross amount of the dividend the tax appropriate to that amount, or, if the dividend is declared to be 'free of tax', to treat it, for the purposes of computing total income, as equivalent to the gross amount which, after deduction of the appropriate tax, corresponds to the net amount actually paid, without any reference to the amount of the company's 'statutory' income. This method of dealing with dividends is one of the accepted conventions under which the Income Tax Acts are regularly administered, and it is consistent with the actual words of the Acts; the method which it is suggested should be substituted would, as a matter of general practice, be unworkable, and would be difficult to reconcile with the language of Section 39 of the Finance Act, 1927. An exception to the general rule has, in recent years, been admitted in a few special cases where it has been clear that the payment of a dividend was, in whole or in

part, a distribution of profits which, by reason of their capital nature, were not within the charge to Income Tax. This exception has now been recognised, and, in a very peculiar case, extended to cover a distribution of a fund which was treated as wholly untaxed, but it does not appear to us that this decision necessitates a reversal of the general practice or the adoption of a process of close investigation of assessments and elaborate calculations for the purpose of arriving at an artificial figure to represent the income of a shareholder in respect of a dividend paid in the ordinary course and under deduction of tax out of a company's annual profits or gains.

In our opinion, the gross amount of the dividends has been rightly included in the computation of the Appellant's total income, and we confirm the assessment."

19. The Appellant immediately after the determination of the appeal declared to us his dissatisfaction therewith as being erroneous in point of law and in due course required us to state a Case for the opinion of the High Court pursuant to the Finance Act, 1927, Section 42 (7), and the Income Tax Act, 1918, Section 149, which Case we have stated and do sign accordingly.

P. WILLIAMSON,
H. M. SANDERS,
} Commissioners for the Special Purpose of the Income Tax Acts.

York House,
23, Kingsway,
London, W.C.2.

31st January, 1931.

The case came before Rowlatt, *J.*, in the King's Bench Division on the 18th and 19th March, 1931, and on the latter date judgment was given in favour of the Crown, with costs.

Mr. A. M. Latter, K.C., and Mr. J. S. Scrimgeour appeared as Counsel for the Appellant, and the Solicitor-General (Sir Stafford Cripps, K.C.) and Mr. R. P. Hills for the Crown.

JUDGMENT.

Rowlatt, J.—In this case a company paid to its shareholders, among whom was the Appellant, a sum in dividends which exceeded the sum in which the company itself had been assessed to Income Tax for the same year. That circumstance arose from the application

(Rowlatt, J.)

of the principles by which the assessment of the profits and gains of the trade which the company carried on is governed. The company deducted the Income Tax at the appropriate rate from the whole of the dividend paid, and the question here is whether the dividends in those circumstances are Super-tax income in the hands of the Appellant to the full extent, or whether they are only so to the extent that they represent the sum on which the profits and gains of the company were computed under the rules of the Income Tax Acts. That is the point, and I hope that I have stated it clearly.

Now before the Commissioners, and before me, it was contended that the matter is concluded in favour of the Appellants by the case which we have called *Gimson's* case(1). In that case, so far as it is material to refer to figures and facts—there was another element which I need not refer to—a sum of £35 had been paid by way of dividend, paid not expressed to be tax-free, and without any deduction, and in fact it was paid without any regard to Income Tax at all. The company itself had not been assessed at all to Income Tax, because in the year in question it had made no profits, and therefore under *Whelan's* case(2) there was no income to be measured and the company escaped assessment.

The first point that arose upon that case—it did not figure much in the argument before me—was this: The Commissioners had added to the sum of £35 the sum of £9, which they called an appropriate addition, and said: "The real dividend is £44, with the "deduction of £9 so as to make it £35", so that the subject was to pay Super-tax on £44, including £9 which did not exist. With regard to that point I can only say that I hope the really genuine shock which I experienced when it was brought to my notice did not incapacitate me from properly considering the rest of the points in the case.

The next point which was made in that case was this, and this was, I think, the main subject matter: It was said that the £35 was a taxable sum in itself, never mind what the company had done; that was the dividend, and a profit and gain, and it ought to be taxed. As to that, I held (as I thought, and think, rightly) that a dividend is not a taxable subject matter in itself. The operation of declaring a dividend is not an operation which gives birth to a profit or gain; it is only the division of profits or gains earned by the trading operation, and the company is assessed in respect of the trading operation, which is the only source of profit or gain, and the declaration of the dividend is merely the division, without any income accruing, of the profits and gains realised.

Then there is a third conception which possibly arises on these facts. It might have been stated, perhaps, that the £35 was to be taken as part of a sum which is to be treated as taxed although as

(1) Gimson v. The Commissioners of Inland Revenue, 15 T.C. 595.
(2) Whelan v. Henning, 10 T.C. 263.

(Rowlatt, J.)

between the company and the Revenue that sum disappears to nil; still there is a constructive sum taxed, never mind what it works out to as a matter of practical figures, and this £35 must be treated as part of that notional sum, and so as part of the taxable income.

Now in order to make that case an authority in the present case before me, I think this is involved, that my decision, negativing such a view as that, laid down that as a matter of principle of general application you were to look at the measured income, unhappily in this case rather loosely called the statutory income, and look at the measured income to ascertain whether the dividend was part of the sum taxable as profits or gains, so that if you found that the measure gave you nothing the dividend would be nothing too, for the purposes of tax. I do not think we ever heard that conception discussed, but if such a point had been taken it would have failed before me without laying down any such principle as that which I have just mentioned.

The company in that case did not really escape by reason of the application of any measure; they escaped because there was nothing to measure, under *Whelan's* case, which is rather a different matter, and there was no basis at all for the application of the system which is introduced by Rule 20(1) or Section 54(2). There is no taxation of the company on its profits and gains. It is possible that some of the words that I used in that judgment, although they were good enough for the point I was there deciding, are not words which become quite accurate when one has to consider the problem in reference to this case; but whatever were the principles of that decision, at any rate there was in that case no deduction of tax at all from the sum of £35. In this case we have tax deducted at the rate applicable, and Section 39 of the Act of 1927 removes any question as to whether the right year and the right rate have been applied; and the question here really is, I think, whether for abatement, and therefore for Super-tax, you can go behind the deduction.

I always said, and it is quite clear, that the tax is a tax of the company, and that the dividend is not taxable of itself as profits and gains, but the tax is handed on by the deduction. So far, there is no necessity to look at the shareholder's individual receipt (to use that word), but then you have the principle of abatement introduced. Super-tax has followed the same lines, and thus introduced the necessity of looking at the individual's income.

Now, as I said during the argument, I do not think anybody has ever sat down to really tackle exhaustively, so as to work out a complete system, the problems which arise in relating the taxpayer's

(1) General Rules applicable to Schedules A, B, C, D and E, Income Tax Act, 1918. (2) Income Tax Act, 1842.

(Rowlatt, J.)

individual income to the income of the company. Those problems of course were very much in the background in 1842, but they came into some prominence as soon as you got the growth of the Joint Stock commercial companies, and their consideration has been one of the esoteric joys of the select company of Income Tax lawyers for a long time.

I do not propose to go through it all, but the germ of it is to be found in the Act of 1842(1), in Section 163, where the language is this, as I read it shortly: "Provided always, . . . that any person "charged or chargeable to the duties . . . either by assessment, or "by way of deduction from any rent, annuity, interest, or other "annual payment . . . who shall prove before the commissioners" and so on "that the aggregate . . . amount of his income" and so on "is less than" so much "shall be exempted from the said "duties, and shall be entitled to be repaid the amount of all deduc- "tions or payments on account thereof"—that is on account of duties, I take it—"in the manner hereinafter directed." That form of words reappears in substance in the Act of 1894(2), and I do not suppose that the Act of 1918, which I think is much more complicated, has altered the system. At any rate, I go back to those initial words, and I think that when abatement was introduced in favour of persons of small income, it must have been intended to let the taxpayer—I will not say shareholder—get back what *de facto* he had with apparent regularity, as to rate and so on, had deducted from his payments, without going into the question of the assessment of the company.

I do not know that a taxpayer very readily obtains access to the assessment of a company. Certainly it would be a formidable task to undertake it. It must be recollected that this was a provision in respect of humble people, and I think that the system of co-ordinating it all with the assessment of the company would be quite unworkable, and that the relief afforded would really have been illusory, and I do not think the words point, as I indicated in the first instance, to the contemplation of any such process to be embarked upon at all, but that the man is to get back his deduction if he has got a small income. That is how I read it, straightforwardly.

Now I wish to say nothing upon the point as to whether, as between the shareholder and the company, the shareholder can get any modification of the amount deducted from him. If he can do that, then the Revenue will have to face it as so adjusted, possibly. I do not say anything about that, but all I do say in this case is that when you have a deduction which is apparently perfectly regular, and which so far has not been displaced, that deduction stands for the purposes of abatement. Now of course we have got Super-tax put on the same rails, and it must follow the same track.

(1) Income Tax Act, 1842. (2) Finance Act, 1894, Section 34.

(Rowlatt, J.)

I am not deciding this matter with any regard to the practice which has been alleged. I do not like, in the matter of taxation Acts, working upon practice. I must say, as I have already said, that it has probably been pursued because there was no other system by which it would have been workable, but I do wish to point this out if we are going to talk about the practice, that I observe in this case that the voucher or counterfoil or whatever it is, which was appended to the dividend warrant, contains the statement that the amount deducted will be accounted for to the Revenue, and one knows I think in a general way that the vouchers which are attached to warrants, at any rate very often, contain a statement to that effect. I do not know whether it depends upon any statutory rule made by the Commissioners; I cannot find anything, and I can see nothing on the face of the Acts which authorises that.

Now a statement of that kind of course is quite harmless where you are deducting tax from an annual payment like interest or some fixed annual payment, and is a useful reminder to the company that if they are deducting tax from their interest, we will say, they must have paid or must intend to pay it over to the Revenue, as the case may be, and especially where the tax is perhaps paid not out of profits or gains brought into charge, it is a very reasonable reminder to give to the company. I very much wonder whether that statement was on the counterfoils which the Metropolitan Water Board and the London County Council gave to their bondholders; I have not searched the reports to find out whether it was so. In one case they resisted unsuccessfully, and in the other case they resisted successfully handing it over. I do not know whether they stated that it would be handed over on the dividend warrant or not, but I want to point out this, that when a statement of that kind is introduced into the dividend warrant it does seem to indicate that the abatement is made conditional upon something in the relations between the Revenue and the company, and that seems to me to be really inconsistent, when you think it out in principle, with the practice which they say has been adopted, and indeed with the decision to which I have come. However, I only mention that because I am not deciding this case upon practice, but if I were deciding it on practice, and that was part of the practice, I should be inclined to think that there must be two sides to the question.

The only other matter that I wish to refer to is the *Metropolitan Water Board's* case(1), with which I was very considerably impressed in this matter; but really the *Metropolitan Water Board's* case was this: What had to be shown there was whether the interest had been paid out of profits or gains brought into charge. The only profits or gains in sight for the purposes of that case were profits and gains figured at nil; I think it may have been that some other sum was

(1) Attorney-General v. Metropolitan Water Board, 13 T.C. 294.

(Rowlatt, J.)

talked about, but it was not really in the picture. That I think is the simple decision in the *Metropolitan Water Board's* case, because the interest could not have been paid out of the profits and gains brought into charge when the only profits and gains visible were nil. That is the long and short of it. I do not think that that affects this case at all, because as I have already said, my view here depends upon what I think is the affirmative effect of the abatement code, upon which the Super-tax question depends. In those circumstances, I think that the appeal fails, with costs.

An appeal having been entered against this decision, the case came before the Court of Appeal (Lord Hanworth, *M.R.*, and Lawrence and Romer, *L.JJ.*) on the 13th and 14th May, 1931, and on the latter date judgment was given unanimously in favour of the Crown, with costs.

Mr. R. Needham, K.C., and Mr. J. S. Scrimgeour appeared as Counsel for the Appellant, and the Attorney-General (Sir W. A. Jowitt, K.C.) the Solicitor-General (Sir Stafford Cripps, K.C.) and Mr. R. P. Hills for the Crown.

JUDGMENT.

Lord Hanworth, M.R.—This appeal fails. It raises a very important point, for if the Appellants' contention was accepted it would alter, if not entirely upset, the system under which deductions of tax are made upon dividends paid to shareholders.

It arises upon these facts. The Appellant is a shareholder in a company called the Transvaal Agency, Limited, a company incorporated in this country under the Companies Acts. He was the holder of 67,500 shares, out of a total issue of 150,000 shares of £1 each in that company. He was paid a dividend, and the question is whether or not the sum that was deducted from that dividend was correct. The way in which it arose was on the payment of his Sur-tax. We have been accustomed for a number of years to the payment of Income Tax which was (not originally, but substantially for modern purposes) imposed by the statute of 1842. Then there was imposed by a later Act a Super-tax. That was imposed by Section 66 of the Finance (1909–10) Act, 1910, Super-tax being a tax which was then called "an additional duty "of Income Tax". In reference to these two taxes, it was necessary that Income Tax should be paid, either by the taxpayer making a return, or by suffering a deduction from sums that he received; but with regard to Super-tax it was necessary for the

(Lord Hanworth, M.R.)

person who was liable to that tax to make a return of the total income that he had received in the year of charge. In order to make a return of his total income, it was important for him to enumerate not merely the sums which he had received, without any deduction from them, but also to incorporate in his return the sums which he had received, and from which a deduction had been made before payment over to him. In order to see what the value of those sums was, it was important that he should add to the sum actually received the sum which had been deducted from it before it had been handed over to him. Unless such an addition was made, the true value to him of the sum received was not appreciated. Similarly, if he had received some dividends or sums paid to him free of tax, it has been necessary, as pointed out in a number of cases (*Ashton Gas Company*[1] case is one, and the case of *Sir Marcus Samuel*[2] is another) to treat him as receiving not merely the sum actually paid to him, but an immunity from charge to tax which was of money value, and must be added on to the sum or benefit which he had received, so as to reach the totality of his income on which the Super-tax was to fall.

By Section 38 of the Finance Act, 1927, a different method is now adopted. There is a tax which is to be charged at the standard rate, and that standard rate is the equivalent of what may be called the Income Tax. If and so far as there is something super-added to that standard rate, that is called Sur-tax, and takes the place of the Super-tax. For the present purpose, what was in operation at the time when this question arose was the Sur-tax; and it was necessary for Mr. Hamilton to make his return, and to be assessed in respect of the Sur-tax upon his income, his income reaching a total which brought him within the ambit of the Sur-tax.

As I have said, he was a shareholder, and received a dividend upon his shares in the Transvaal Agency, Ltd. I take the facts now from paragraphs 12 and 13 of the Case, which state: "On "30th June, 1928, a warrant or cheque for £5,400 was forwarded "by the company to the Appellant, accompanied by a certificate, "in compliance with the provisions of Section 33 of the Finance "Act, 1924, shewing the gross amount of the dividend paid to "him as £6,750, and the amount of tax deducted at 4*s*. in the £, "as £1,350. Similarly, on 13th February, 1929, a warrant or "cheque for £16,200 was forwarded by the company to the "Appellant, accompanied by a certificate shewing the gross "amount of the dividend paid to him as £20,250, and the amount "of tax deducted at 4*s*. in the £ as £4.050." It will thus be seen that in the year ending 5th April, 1929, which is the year in

(1) Ashton Gas Company v. Attorney-General, [1906] A.C. 10.

(2) Sir Marcus Samuel, Bart., v. The Commissioners of Inland Revenue, 7 T.C. 277.

(Lord Hanworth, M.R.)

question, Mr. Hamilton had received in fact two sums; but had in one case £1,350 and in the second case £4,050 deducted from the gross amount payable to him as being deductions justified by the company holding back tax at 4*s.* in the £. As pointed out in the paragraph that I have read, the particulars that are given are now required to be given by Section 33 of the Finance Act, 1924. That Section requires certain details to be given, so that the shareholder may have before him upon the face of the dividend warrant an explanation of the sum that has been deducted, the amount from which it has been deducted and the calculation and rate of the sum which has been deducted for Income Tax. The Case proceeds in paragraph 13: "The amounts included in respect "of these dividends in the Appellant's return of total income "and in the assessment made upon him to Sur-tax, were the "gross amounts shewn in the above-mentioned certificates. The "Appellant now claimed that there should be substituted "67,500/150,000ths of the amounts" of the sums set out in the Case and paid as tax by the company itself. The company had had its profits subjected to tax; and it had paid, in the first year, 1927, £13,652 by way of tax, and in the next year, £15,135.

What was said as to this claim in paragraph 13 is this: that in order to arrive at what ought to be deducted from the shareholder, the company was not entitled to take the rough and ready measure of the rate of Income Tax applicable for the year, but ought to divide out among its shareholders or corporators an aliquot part of the sum that it had paid in Income Tax, that aliquot part being determined by finding the ratio of the interest held by the taxpayer compared to the total interest of all the corporators together. In this case, as the shareholder held 67,500 shares, and there were 150,000 shares issued, the Appellant's quota to be paid by him would be ascertained by the fraction determined by putting 67,500 over 150,000, and taking that proportion of the sums I have already mentioned in the two years in question, £13,652 and £15,135. The Commissioners held that the Appellant was not entitled to alter the sum charged against him or deducted from him. That decision of the Commissioners has been upheld by Mr. Justice Rowlatt, and hence this appeal.

It will be seen that the divergence between the two points of view of the taxpayer (the Appellant), and the Crown, is this. The taxpayer says: "I am only liable to pay a sum which is "the appropriate amount to be distributed to me of the sum "which has been charged against the company." The Crown on the other hand says: "You have received a certain sum. You "have to pay Income Tax on the amount of the dividend "payable to you. The company is the hand which is to collect the "tax and therefore it has rightly charged you, collected from

(Lord Hanworth, M.R.)

"you, deducted from your dividend, a sum at the appropriate "rate of tax for the year in which it is deducted, and being the "collector it is entitled to do that, and it will bring into its "accounts those sums so deducted against the sums which it, as "a taxpayer, has had to pay." It is a root principle of the system of Income Tax, so clear that I do not pause to state the authorities for it, that deductions at the source should be an integral part of the system of the collection of the tax. It has been adopted in respect of a number of payments which are made by one person to another. A tenant has to pay the tax under Schedule A for his landlord, and the landlord has to allow out of any rent which is due to him immediately after that payment the amount paid by the tenant in respect of the tax under Schedule A.

A number of Income Tax Acts have been codified and in part amended by the Act of 1918, which came into operation pursuant to Section 239 on the 6th April, 1919. We have, from and after that date therefore, no longer to consider the terms of Section 54 of the Act of 1842. Now it is at once to be noticed that the Rule which replaces Section 54 of the Act of 1842, does not use the same words as are to be found in Section 54. The consequent and resultant effect is that one assumes, when different words are used, that some change must be intended by the choice of those different words.

As I have said, the root principle, or one of the root principles, of the collection of Income Tax is deductions at the source; and that is provided for in the General Rules which are attached to Schedules A, B, C, D and E. Rule 19 deals with the payment of yearly interest on money and annuities and the like. It says: where a person, who is liable to pay, pays to the recipient moneys which are payable wholly out of the profits or gains brought into charge, then no assessment is to be made upon the person entitled to such interest or annual payment, that is, the recipient, but the whole of those profits or gains are to be assessed and charged with tax on the person liable to pay the interest or other annual payment, without distinguishing the same, and the person liable to make such payment—that is, who has to make the payment to the recipient, whether out of profits or gains charged with tax or out of any annual payment liable to deduction—shall be entitled, on making such payment, "to deduct and retain thereout "a sum representing the amount of the tax thereon at the rate "or rates of tax in force during the period through which the "said payment was accruing due." That Rule is plain enough. It clearly entitles the deductor to retain out of the recipient's interest, or payment due to him, a sum, and he, the deductor, retains that while the recipient is bound to give a discharge for the full amount as if he had actually received it.

(Lord Hanworth, M.R.)

The question of rate of tax, which may be left open upon that Rule, has now been stabilised by Section 39 of the Finance Act, 1927, which says: "The tax may be deducted or shall be allowed "at the standard rate for the year in which the amount payable "becomes due." The difficulties which may have arisen, or might arise between the sums which had accrued due in one year and were payable in another, are thus brought to rest by this, it may be arbitrary system, but still a clear system, that the tax is to be allowed at the standard rate for the year in which the amount payable becomes due.

Rule 21 deals with a case where the moneys that are paid over to the recipient are not payable, or not wholly payable, out of profits or gains brought into charge. As the deductor is made the collector for the Revenue he can retain the sum deducted where his payment to the recipient is made out of the profits or gains already brought into charge; but where the payment is made out of profits or gains which have not been brought into charge, the deductor has to make a return to the Revenue of the amount so deducted, and every such amount becomes a debt due to the Crown from him.

Intermediately between these two Rules is Rule 20. Under that Rule "The profits or gains to be charged on any body of persons"—and that, by the interpretation Section (237) includes "company"—"shall be computed in accordance with the "provisions of this Act on the full amount of the same before "any dividend thereof is made in respect of any share, right or "title thereto." That directs what we all know as the system that Income Tax has to be paid upon the gross profits of a company before it is allowed to deal with the question of the destination or distribution of those profits. The Rule goes on: "and the "company paying such dividend shall be entitled to deduct the "tax appropriate thereto." It appears to me that those words, simply construed, prevent any difficulty such as has been argued in the present case arising. The company that pays the dividend is entitled to deduct the tax appropriate thereto, that is, to the dividend. You have to keep your eye upon the dividend to see to what the tax is appropriate; and inasmuch as the tax is imposed by the Finance Act of the particular year and the liability is for that year, the tax that would be appropriate for that year would be the tax imposed by the Finance Act which brings this Income Tax Act of 1918 into operation. Without such a Finance Act passed in the year, the Income Tax Act would be dormant. It is only when by Section 1 of the Act the charge is made in respect of Income Tax that the Act comes into operation and effect. Thus simply construed, it appears that the word "appropriate" has reference to the sum paid by way of dividend, and the amount charged in that year by the Finance Act.

(Lord Hanworth, M.R.)

It is said, however, that that is not so; and the argument is founded upon a passage which is found in Lord Phillimore's speech in *Bradbury* v. *English Sewing Cotton*, [1923] A.C. 744, at page 770(1), where Lord Phillimore does seem to suggest that that statute "carries the analogy of a partnership further, for "it contemplates a company declaring a dividend on the gross "gains, and then on the face of the dividend warrant making a "proportionate deduction in respect of the duty", so that the shareholder pays an aliquot part of the sum paid by the company. Reference is also made in support of the argument to a passage in the judgment of Lord Cave, in *Singer* v. *Williams*, [1921] 1 A.C. 41, at page 50(2), where he says: "The shareholder in a "British company pays, by way of deduction, a part of the tax paid "by the company." It is right to point out with regard to both those passages that they relate to a system of Income Tax before the Act of 1918 came into force; that is to say, before Rule 20 replaced Section 54 of the Act of 1842. It is also right to observe that both those cases are dealing with matters very different from the plain problem which is presented to us, complicated though in its results it would prove to be. It is right, I think, for us to say that we have to interpret Rule 20, and I have already suggested a simple interpretation of these comparatively simple words. I do not find sufficient authority in either of the passages which have been referred to, culled as they are from speeches made on wholly different subjects, enough to countervail the plain meaning of the words of Rule 20. I therefore cast no doubt, or do not intend to raise any doubt, as to whether the system in practice before the Act of 1918 came into force, was right. But since the Act of 1918 has been in force, and we have to construe Rule 20 of that Act, I think it is plain that the interpretation I have suggested is right.

I have, I think, already expressed a clear indication of what my reading of these Rules 19, 20 and 21 is, in the case of the *Commissioners of Inland Revenue* v. *Dalgety & Co.*, which is reported in [1930] 1 K.B. 1(3). I begin on page 24 and summarise on pages 25 and 26(4) the effect of the Rules: "From these Rules "it is clear that (*a*) the tax so deducted is the tax that ought "to be paid by the person entitled to the interest; (*b*) no "assessment is made upon the person entitled to the interest, and "that the system of deduction—in other words, payment at the "source—is adopted in respect of his liability." That is the liability of the person entitled to and the recipient of the interest. I make it quite plain, I think, that there is a distinction between the company as an entity paying its tax and the shareholder as an

(1) 8 T.C. 481, at p. 519.
(2) 7 T.C. 419, at p. 431.
(3) 15 T.C. 216.
(4) *Ibid.* at p. 231.

(Lord Hanworth, M.R.)

entity paying his tax. On page 28(1) I say this, after referring to the case of the *London County Council* v. *Attorney-General*(2): "These passages make it clear that the tax deducted is paid on "quite a different account from that of the deductor—namely, "the taxpayer who is entitled to have the interest paid to him; "and further that the right to retain the tax deducted is one "which is given clearly and ought to be enforced in favour of "the deductor." That case illustrates that the system may be one in which the tax paid by the company and the tax deducted from its shareholders may not be the exact equivalent, the one of the other, but broadly that system is allowed to work even though at different times it might yield some possible profit to the company. The observations that I made on that occasion were not based upon my own authority alone. The matter had been discussed first of all by Mr. Justice Astbury in *Rover* v. *South African Breweries*(3). What arose there was a question of whether or not the shareholder was entitled to a relief given to the company by reason of the fact that it had paid some Colonial tax. The argument presented there was, contrary to what was ultimately decided, that those dividends become part of the shareholders' income which is taxable as such, but the provision for deducting the tax on the dividends is only machinery for collecting the shareholders' tax at the source, and the company's tax and the shareholders' tax are two distinct things. That argument did not prevail. The matter had been to some extent discussed in the case of the *Attorney-General* v. *Ashton Gas Company*(4). But this case of *Rover* v. *South African Breweries* came directly before the House of Lords in the case of *Scottish Union and National Insurance Company* v. *New Zealand and Australian Land Company*(5). It is quite true that the claim there was that the preference shareholders should share in the immunity or advantage which had been enjoyed by the company by a repayment of tax in consequence of their profits having paid a Colonial tax. But the question which arose was relevant, as is shown by the argument presented, which is found on page 175: "The shareholders pay the tax and the company is only the "medium of payment. Since the company pays as agent for all "the corporators it follows that whatever it recovers in the form "of abatement of United Kingdom Income Tax must be "communicated to the same persons", and so on. I go to the speech of Lord Finlay. I am reading from the bottom of page 182: "The sums repaid by the Commissioners go into the assets of the "company, and will fall into the dividend payable to the ordinary "shareholders, whose dividends would otherwise have been "diminished by the whole amount of the disbursements for the "Colonial Income Tax. It is on the ordinary shareholders that

(1) 15 T.C. at p. 233. (2) 4 T.C. 265. (3) [1918] 2 Ch. 233.
(4) [1906] A.C. 10. (5) [1921] 1 A.C. 172.

(Lord Hanworth, M.R.)

" the burden of this Colonial tax . . . . falls." Then the case of *Rover* v. *South African Breweries*(1) was cited, and he holds that that case cannot stand : " But it by no means follows that because such a repayment has been made "—that is, under Section 43 —" what takes place is equivalent to a reduction of the United " Kingdom Income Tax by the amount returned. The wording of " the Section shows that this is not what was meant. It is only " a person who has paid the United Kingdom Income Tax that is " entitled to apply for the repayment in respect of Colonial taxes " which have been paid on the same portion of income . . . The " company has, in fact, paid the United Kingdom Income Tax and " it is the company that is entitled to the repayment received." Then he says : " I think the decision in *Rover's* case was " erroneous." Then : " The decision proceeded simply on the " assumption that the repayment had the effect of diminishing " *pro tanto* the United Kingdom Income Tax." Then Lord Cave says : " It seems probable that, if the appellant succeeded, the " preference shareholders, having borne tax at 3*s*. 6*d*. in the £ " only, would be liable to be assessed to tax for the additional " 1*s*. 6*d*. in the £, in which case the Revenue would get back " through those shareholders the whole of the sum paid to the " company under Section 43 of the Act."

Considering the reasoning in *Rover's* case, and considering this case overruling *Rover's* case, and considering Lord Cave's words, it is plain that the shareholder is to be treated as a separate entity for the payment of tax; otherwise, if he had been given this relief of 1*s*. 6*d*. in the £, he might still be liable, as Lord Cave suggests he might be liable, for the additional sum, that sum being paid under the additional assessment direct by him to the Revenue.

These passages (and I have brought them into my judgment in the *Dalgety*(2) case) appear to me to make the position plain as between the company and the shareholder. They are two separate and different entities and the shareholder is not merely paying an aliquot part of the taxation imposed upon the company. Moreover, a long time ago it was said, and has always been accepted, by Lord Cave, in *Inland Revenue Commissioners* v. *Blott*, reported in [1921] 2 A.C. 171, Lord Cave's statement being at page 201(3) : " A company paying Income Tax on its profits does " not pay it as agent for its shareholders. It pays it as a taxpayer, " and if no dividend is declared the shareholders have no direct " concern in the payment. If a dividend is declared, the company " is entitled to deduct from such dividend a proportionate part " of the amount of the tax previously paid by the company; and " in that case, the payment by the company operates in relief of " the shareholder. But no agency, properly so-called, is involved."

(1) [1918] 2 Ch. 233. (2) 15 T.C. 216. (3) 8 T.C. 101, at p. 136.

(Lord Hanworth, M.R.)

It is clear, after considering these authorities, that there is no sufficient ground for accepting the view presented in the speech of Lord Phillimore to contradict the plain words of Rule 20. I think it is plain that the taxpayer must be treated as a separate entity, the company being treated as a collector, as has been said in one of the cases, for and on behalf of the Crown. In those circumstances, it appears to me that the decision of the Commissioners was right and the decision of Mr. Justice Rowlatt upholding their decision must be affirmed.

I desire to say only one word more. It has been suggested that the case of *Gimson*(1) supports the view presented by the Appellant. I am not sure that that is so. I do not think that the facts of the *Gimson* case make it an authority in the present case. But I should like to say this. If and when it does become necessary to consider that case, I should like to take a full opportunity of doing so. At the present time, I do not desire at all to say that I think it either right or wrong. I merely say that I dissociate myself from it as unnecessary to the present case and reserve an opportunity to consider it if and when that should arise.

Lawrence, L.J.—I entirely agree and have very little to add to the judgment delivered by the Master of the Rolls. Broadly stated the contention on behalf of the Appellant is that the company is not entitled to deduct from the dividends paid to the shareholders more than the proper proportion of the Income Tax which the company has itself actually paid or is liable to pay in respect of the profits or gains which it distributes by way of dividend. The answer to that contention turns, in my judgment, entirely upon the construction of the phrase "entitled to deduct " the tax appropriate thereto ", at the end of Rule 20 of the All Schedules Rules to the Income Tax Act, 1918. In construing that phrase, I think it is important to bear in mind that the Income Tax Act of 1842 was entirely repealed by the Act of 1918, and that Rule 20 now takes the place of Section 54 of that Act. The phraseology has been altered. Under Section 54 of the Act of 1842 it was provided that the shareholder should allow out of dividends a proportionate deduction in respect of the duty charged on the company, whereas under Rule 20 the company is entitled or authorised, when paying a dividend, to deduct from that dividend the tax appropriate to that dividend. To my mind the language in Rule 20 is different, both in form and in substance, from the language under the Act of 1842.

The sole question, to my mind, which arises in this case, is, what is the meaning of " the appropriate tax " in that Rule. It

(1) Gimson v. The Commissioners of Inland Revenue, 15 T.C. 595.

(Lawrence, L.J.)

is to be appropriate to the dividend. If there were any doubt as to the amount on which that tax was to be collected, that doubt is, I think, entirely cleared up by Section 33 of the Act of 1924. That Section was not enacted to clear up any doubt under Rule 20 but was obviously enacted for another purpose—viz., to compel the company to explain, on the face of the dividend warrant, how the net sum payable to the shareholder by way of dividend had been arrived at and what deduction had been made in respect of Income Tax. Not only did that Section throw on the company the duty of telling the shareholder how the sum payable to him was arrived at, but it gave the shareholder the means of demonstrating to the Revenue officials the amount deducted for Income Tax when applying for repayment of that Income Tax to which he was entitled. Rule 20, however, did leave one matter open, namely, whether the Income Tax which the company was entitled to deduct was Income Tax calculated at the rate prevailing when the profits out of which the dividend was paid were earned, or whether it was Income Tax calculated at the rate which prevailed at the date when the dividend was paid. That matter has, however, been cleared up by Section 39 of the Act of 1927, which lays it down in clear terms that the rate at which the company is to calculate the Income Tax which it is entitled to deduct from the dividend is the rate prevailing at the date when the dividend is paid.

It seems to me, in those circumstances, that there is no room for the argument which was addressed to us, that the appropriate tax was a proportion of the tax which the company itself had paid in respect of the gains and profits out of which the dividend was paid. It seems to me quite plain, on the wording of Rule 20 that the tax appropriate to the dividend is the tax ascertained in the manner I have explained. As my Lord has pointed out, the taxpayer is the shareholder and, under this machinery, the company is made the collector of the shareholder's tax for the Revenue. I agree, therefore, that this appeal fails.

Romer, L.J.—I agree. The question that arises on the appeal turns upon the true construction to be placed upon Rule 20 of the General Rules applicable to Schedules A, B, C, D and E of the Income Tax Act, 1918. At first sight, if the language of that Rule be narrowly scrutinized, there does seem some foundation for the argument that the annual dividends to which the Rule applies are dividends that are paid out of the profits brought into tax by the company. The Rule provides: "The profits or gains to be "charged on any body of persons shall be computed in accordance "with the provisions of this Act on the full amount of the same "before any dividend thereof is made." That, if construed strictly, would seem to refer only to the dividends of the profits

(Romer, L.J.)

which are being computed. Then it goes on to say: "and the "body of persons paying such dividend shall be entitled to deduct "the tax appropriate thereto." If the word "such" be strictly construed, again it would appear to refer to a dividend payable out of or paid out of the profits brought into tax. But this Rule and Section 54 of the Income Tax Act of 1842 (which corresponded to Rule 20 of the Act of 1918) have in practice always been treated as referring to all dividends. It has always been assumed, as far as I know, by companies, that all dividends were included in Section 54 of the Act of 1842, and are included in this Rule. The same assumption seems to have been made by every judge who has had to consider the operation of the Rule or of the Section. Further it seems to me the same assumption has been made by the Legislature both in Section 33 of the Finance Act, 1924, and in Section 39, Sub-section 1, of the Finance Act, 1927. In these circumstances, I think, it is quite impossible to treat the Rule as applying only to the dividends payable out of profits brought into tax and not as applying to any dividends paid by a company.

That being so, the only question remaining on the appeal is as to what is the tax appropriate to be deducted from a dividend when the company pays it. It is said by the Appellant that where a company has paid a tax to the Crown it is not appropriate, indeed it is most inappropriate, that when dividing profits among shareholders it should deduct from a dividend any greater sum than it has paid itself to the Crown in respect of tax on these profits. That argument has frequently been addressed to the Courts—at any rate, it was addressed to the House of Lords in the *Scottish Union*(1) case. In reference to it Lord Cave said this: "It "was pointed out in the course of argument that such a "construction of the statute"—he was there dealing, I think, with Section 54 of the Act of 1842, and not with Rule 20 of the Act of 1918—"would lead to results which cannot possibly have "been intended." Further than that, it seems to me that there is a fallacy lying at the very root of the argument and that fallacy is this. It treats the company not as a separate legal entity but as merely being equivalent to the aggregate body of its shareholders and treats the company when it pays tax to the Crown as paying tax on behalf of its shareholders. It has, however, frequently in recent days been pointed out by the Courts, contrary to the opinion entertained by Mr. Justice Astbury in the *Rover*(2) case, that the company is one taxpayer and that each individual shareholder is another, and a separate taxpayer, on whose behalf the company deducts a tax when it pays a dividend, but on whose

(1) Scottish Union and National Insurance Company v. New Zealand and Australian Land Company, [1921] 1 A.C. 172.

(2) [1918] 2 Ch. 233.

(Romer, L.J.)

behalf it is not paying the tax when it pays its own tax to the Crown. If a company should declare a dividend without deducting tax then it seems to me that the shareholder would himself be assessable to tax in respect of the dividend he had received. Lord Halsbury seems to have no doubt as to that when he was making his speech in the House of Lords in the case of the *Ashton Gas Company*(1) and Lord Cave in the *Scottish Union*(2) case stated that that probably was so. If that be so, and the company merely acts as a collector of the tax payable by the taxpayer to the Crown, it is quite obvious that the appropriate tax to be deducted from the dividend is a tax which the taxpayer himself would have to pay if he were assessed directly in respect of that dividend. Before the Finance Act of 1927, it would have been an amount calculated by reference to the rate or rates of tax in force during the year or other period in respect of which the dividend was paid. Since the coming into force of the Finance Act of 1927 it is an amount calculated by reference to the standard rate in force at the time when the dividend becomes payable.

For these reasons, I agree that the appeal should be dismissed.

Lord Hanworth, M.R.:—The appeal will be dismissed with costs.

[Solicitors :—Birkbeck, Julius Edwards & Co.; Solicitor of Inland Revenue.]

---

(1) [1906] A.C. 10. (2) [1921] A.C. 172.

VOL. VII.—PART V.

No. 405.—In the High Court of Justice (King's Bench Division).—1st July, 1918.

Sir Marcus Samuel, Bart. *v.* The Commissioners of Inland Revenue.(1)

Super-tax.—Total income.—Dividends received free of Income Tax.—Shareholder's return of total income to include amount of dividend actually received by him plus the Income Tax in respect of it.—Finance (1909-10) Act (10 Edw. 7, c. 8), 1910, Section 66.—Income Tax Act, 1842 (5 & 6 Vict. c. 35), Section 54.

The Appellant was the holder of certain ordinary shares in a company and, under the authority of a resolution of the Directors duly confirmed by the Company at its annual general meeting, the dividends upon these shares had been paid free of Income Tax.

In arriving at the Super-tax assessments the Special Commissioners computed the income derived from these dividends as follows:—

Assuming the amount of the "tax-free" dividend to be £100 and Income Tax at a uniform rate of 1s. 2d. to apply to the whole period in respect of which such dividend was paid—

Actual amount of dividend received "free of tax"	£100	0	0
Add Income Tax at 1s. 2d., i.e., 1s. 2d. for every 18s. 10d.	6	3	10
Gross amount of dividend receivable	£106	3	10

Held, *affirming the decision of the Special Commissioners, that the amount to be included in Appellant's return of total income for purposes of Super-tax was not the amount of dividend actually received by him, but that amount with the addition thereto of the amount of Income Tax in respect of it as above set out.*

Attorney-General *v.* Ashton Gas Company (2) *followed.*

Case.

Stated under the Finance (1909-10) Act 1910 s. 72 (6) and the Taxes Management Act 1880, Section 59 by the Commissioners for the Special Purposes of the Income Tax Acts for the opinion of the King's Bench Division of the High Court of Justice.

---

(1) Reported 34 T.L.R. 552.

(2) (1904) 2 Ch. 621.

(30883*—6) Wt. 24854—437 5000 1/21 H. St. G. 2

I. At a meeting of the Commissioners for the Special Purposes of the Income Tax Acts held at York House, Kingsway, London, W.C., on the 2nd May 1916 for the purpose of hearing Appeals Sir Marcus Samuel, Baronet (hereinafter called the Appellant) appealed against assessments to the Super-tax made upon him for the following years :—

For the year ended 5th April, 1914.
" " " " 1915.
" " " " 1916.

Such assessments are hereinafter referred to as "the Super-tax Assessments".

The point in dispute being entirely one of principle at the request of the Appellant no figures are mentioned in the Statement of this Case, it being agreed on both sides that if the contention of the Appellant be upheld by the Court reductions to agreed figures will fall to be made in the Super-tax assessments for each of the years involved. If, on the other hand, the contention of the Respondents be upheld by the Court, it is agreed that the Super-tax assessments as made are correct.

II. The Appellant is a shareholder in the "Shell" Transport and Trading Company Limited, which was registered 18th October 1897 (hereinafter called "the Company") his holding consisting of Preference Shares of £10 each fully paid and of Ordinary Shares of £1 each fully paid.

1. A print of the Memorandum and Articles of Association of the Company is annexed hereto (marked "A") and made part of this Case.(1) The Articles provide *inter alia* :—

> 108. The Company in General Meeting may declare a dividend to be paid to the Members according to their rights and interests in the profits, but no larger dividend shall be declared than is recommended by the Board.
>
> 109. Subject to the rights of Members entitled to shares issued upon special conditions the profits of the Company available for distribution shall be divisible among the Members in proportion to the amount paid up or credited as paid up on the shares held by them respectively.
>
> 110. When in the opinion of the Board the position of the Company permits, interim dividends may be paid to Members on account of the dividend for the then current year.

2. The dividends on the Preference Shares of the Company are paid "*less Income Tax*" but as regards the dividends on the Ordinary Shares the following resolution was passed by the Directors of the Company on June 7th 1898 :—

> "It was decided in the event of an Interim Dividend being "declared to pay same "*free of Income Tax*".

(1) Omitted from the present print.

As from that date all dividends on the Ordinary Shares both interim and otherwise have been paid "*free of Income Tax*". Extracts from the Minutes of Meetings of the Directors of the Company held on 6th June 1912, 2nd June 1913 and 29th May 1914 as to resolutions declaring payment of Interim Dividends and recommending payment of Final Dividends on the Ordinary Shares all "free of Income "Tax" and extracts from the Minutes of the Meetings of the said Directors held on the 18th December 1912, 20th November 1913 and 16th December 1914 as to resolutions declaring payment of Interim Dividends on the Ordinary Shares all "free of Income Tax" are annexed hereto (marked "B") (1) and made part of this Case.

3. In each of the Reports of the Directors of the Company for the years ended 31st December 1911, 31st December 1912 and 31st December 1913, referring to the proposed Dividends being the dividends recommended by the said Directors at their Meetings on the 6th June 1912, 2nd June 1913 and 29th May 1914 on the Ordinary Shares, it is stated "The Dividend is paid free of Income "Tax which is charged at the rate of 1*s.* 2*d.* in the £."

In the Report of the Directors of the Company for the year ended 31st December 1914 referring to a proposed Dividend on the Ordinary Shares it is stated: "The Dividend is paid free of Income Tax, "which is charged at the rate of 1*s.* 8*d.* in the £."

Copies of the foregoing Reports are annexed hereto (marked respectively "C" "D" "E" and "F") (1) and made part of this Case.

4. Extracts from the Minutes as to resolutions passed at the Annual General Meetings of the Company held on 19th June 1912, 18th June 1913, and 22nd June 1914 confirming the dividends recommended by the said Directors in their resolutions of 6th June 1912, 2nd June 1913 and 29th May 1914 (*vide* paragraph 3 of this Case) are annexed hereto (marked "G") (1) and made part of this Case. In pursuance of the said resolutions the Appellant became entitled in each of the three years ended 5th April 1913, 5th April 1914 and 5th April 1915 to the amount of dividend applicable to his holding of Ordinary Shares in the Company "free of Income Tax".

5. Forms of the Dividend Warrants under which the Dividends on the Ordinary Shares were paid free of Income Tax on 5th July 1912 and 6th January 1913, 5th July 1913 and 5th January 1914 and 7th July 1914 and 5th January 1915 are annexed hereto (marked "H") (1) and made part of this Case.

At the foot of the portions of the aforesaid Dividend Warrants retained by the shareholders the following certificate and note appears:

"I hereby certify that Income Tax on the profits of the "Company of which this Dividend forms a part, will be duly "paid to the proper Officer for the receipt of Taxes.

"By order of the Directors,

"E. A. SMITH-REWSE,

"*Secretary.*

(1) Omitted from the present print.

"This statement, to be retained by the shareholder, will be "accepted by the Commissioners of Inland Revenue as a "certificate in claiming exemption from Income Tax."

III. In arriving at the Super-tax assessments the Commissioners by whom such assessments were made computed in accordance with their invariable practice the portion of the income of the Appellant derived from dividends received from the Company "free of Income Tax" in the following manner:

Assuming the amount of the "tax free" dividend to be £100 and Income Tax at a uniform rate of 1*s.* 2*d.* to apply to the whole period in respect of which such dividend was paid them.

Actual amount of dividend received "free of tax"	£100	0	0
Add Income Tax at 1/2*d. i.e.*, 1/2*d.* for every 18/10 = $\frac{14}{228}$ or $\frac{7}{114}$ of £100 = ...	6	3	10
Gross amount of dividend receivable ...	£106	3	10

In estimating total incomes for the purpose of exemption or abatement in cases where "tax free" dividends are involved a similar course to the above is adopted.

IV. Mr. A. M. Bremner, Counsel, who represented the Appellant, did not dispute that in arriving at the Appellant's liability to Super-tax, as far as regards the dividends paid "less Income Tax" on the Preference Shares held by him the *gross* dividends, *i.e.*, the amounts prior to the deduction of the Income Tax thereon are properly included in the computation of the Super-tax liability, but contended that as regards the dividends paid "free of Income Tax" on the Ordinary Shares, no addition should be made to the actual sums received in respect of Income Tax assumed by the Special Commissioners to have been deducted in arriving at the dividends declared.

He also contended:

(A) That when a Company declared a dividend "free of tax" it in effect made a present to the Shareholder of the amount of the tax and that such voluntary payment could not be regarded as a portion of the income of the Shareholder either for Income Tax or Super-tax purposes.

(B) That the sum paid as a dividend "free of tax" in fact includes the tax and the amount paid as dividend.

(C) That the real income of the Appellant from the Shares in question was the amount for which he could maintain an action against the Company and that in the present case only the dividend actually declared and paid to the Appellant could legally be recovered from the Company.

V. On behalf of the Respondents it was contended *inter alia*:

(A) That as a general rule Income Tax is deducted from gross dividends on payment, under the provisions of Section 54 of the Income Tax Act 1842 and the amount of the tax so deducted is shown on the Dividend Warrants.

(B) That in cases of dividends paid "free of tax" Income Tax is, in effect, deducted in arriving at the amount of such dividends, the only practical difference between Dividends paid "less Income Tax" and "free of Income Tax" being that in the former the amount of the gross Dividend and the tax deducted therefrom is shown on the Dividend Warrants, and in the latter only the net sum remaining after suffering its proportion of the Income Tax. The result in either case being the same.

(C) That the Directors' Reports (*vide* paragraph II. (3) of this Case) and the certificates and notes on the Dividend Warrants (*vide* paragraph II. (5) of this Case) support the above view.

(D) That in the circumstances the assessments were properly made and should be confirmed.

VI. The following Cases were referred to:

Ashton Gas Company v. *Attorney-General* ([1906] A.C. 10).

Kinloch v. *Kinloch* ([1880] 17 Sc. L.R. 444).

VII. Having duly considered the facts and arguments adduced we were of opinion that the assessments under appeal were correctly made and we confirmed the same accordingly.

VIII. The Appellant immediately upon the determination of the Appeal gave notice of dissatisfaction with our decision as being erroneous in point of law and in due course required us to state a Case for the opinion of the High Court, pursuant to the Finance (1909-10) Act 1910, section 72 and the Taxes Management Act, 1880, section 59 (1) which Case we have stated and sign accordingly.

CHAS. H. RICKMAN, } Commissioners for the Special Purposes
MARK STURGIS, } of the Income Tax Acts.

York House, Kingsway,

London, W.C.2.

19th November 1917.

The Case was heard before Mr. Justice Sankey, when Sir Ernest Pollock, K.C., and Mr. Bremner appeared for the Appellant and the Solicitor-General (Sir Gordon Hewart, K.C., M.P.) and Mr. T. H. Parr for the Respondents. Judgment was delivered on the 1st July, 1918, in favour of the Crown, with costs.

JUDGMENT.

Sankey, J.—In this Case the Appellant appeals against assessments to Super-tax, made upon him, for the years ending 5th April, 1914, 1915, and 1916.

The point in dispute is entirely one of principle, and no figures were mentioned in the statement of the Case. The question is what is the method of calculation to be made for Super-tax purposes where dividends are paid free of Income Tax.

It is easiest to illustrate the difference between the parties by taking a hypothetical figure, as was done in the Case.

Assume, for the sake of argument, that the actual amount of dividend received free of tax is £100, and the Income Tax is at 1*s*. 2*d*. in the £, has the taxpayer for the purposes of Super-tax to return the amount of £100, or must he add the Income Tax which has been paid to the Government, viz., £6 3*s*. 10*d*., and return £106 3*s*. 10*d*. as the amount received by him for the purposes of calculating his Super-tax?

The latter method of calculation had been invariably adopted, and the taxpayer has been taxed for Super-tax on the £106 3*s*. 10*d*.

The Appellant now seeks to challenge this practice.

Super-tax is payable under Section 66 of the Finance (1909-10) Act, 1910, which provides that "In addition to the income tax charged at "the rate of one shilling and twopence under this Act, there shall be "charged, levied and paid for the year beginning on the sixth day of "April, nineteen hundred and nine, in respect of the income of any "individual, the total of which from all sources exceeds five thousand "pounds, an additional duty of income tax (in this Act referred to as "super-tax) at the rate of sixpence for every pound of the amount by "which the total income exceeds three thousand pounds." The figures have been altered in subsequent Acts.

It is further provided by Section 54 of the Act of 1842 that a company shall pay Income Tax on behalf of its shareholders, the marginal note of the Section reading "Officers of Corporations to prepare statements of "profits and gains to be charged, estimated on the annual profits before "dividend made." And it is provided that "all such persons and cor-"porations or companies shall allow out of such dividends a proportionate "deduction in respect of the duty so charged."

It was contended by the Appellant that, when a company declared a dividend free of tax, it in effect made a present to the shareholder of the amount of the tax, and that such voluntary payment could not be regarded as a portion of the income of the shareholder, either for Income

Tax or Super-tax purposes, and that the real income of the Appellant from the shares in question was the amount for which he could maintain an action against the company, that is, the amount which was actually paid to him.

In my view this question is concluded by authority. In the Case of *Attorney-General* v. *Ashton Gas Company* ([1904], 2 Ch. 621), it was held that, "Where by a special Act of a gas company it was provided "that the profits divisible in any year amongst the ordinary shareholders "should not exceed a given rate, in calculating the rate of dividend "Income Tax ought to be included."

In that Case the company paid dividends at 10 per cent. free of Income Tax, and Mr. Justice Buckley, in giving his judgment, says:— "the profits are not arrived at after deducting tax, the Income Tax is "part of the profits, viz., such part as the Revenue is entitled to take "out of the profits."

That was affirmed in the Court of Appeal at page 626 of the same volume and in the House of Lords ([1906] A.C., at page 10). The principle was also followed by Mr. Justice Sargant in *Johnston* v. *Chestergate Hat Manufacturing Company, Ltd.* ([1915], 2 Ch., p. 338), where it was a question of remuneration of a manager by a percentage on net annual profits, and it was held that the manager was entitled to be paid his percentage on the net profits before deduction of the tax.

In the present Case, upon each of the dividend warrants sent to the Appellant by order of the Directors, the Secretary states: "I hereby "certify that Income Tax on the profits of the Company, of which this "dividend forms a part, will be duly paid to the proper Officer for the "receipt of Taxes."

In my view a correct appreciation of the facts renders the argument for the Appellant untenable. When a company declares a dividend out of the profits it has made, the whole of those profits do not belong to the shareholders. Part of them belong to the Government for Income Tax.

I will call the amount which is to be distributed to the shareholders X, and the amount which is paid to the Government Y.

Now, the profits of the company are not X, the part divided amongst the shareholders, but X+Y, for the Income Tax is part of, and has been taken out of, the profits.

Coming now to a distribution to an individual shareholder, the same reasoning applies. When a company has paid, say, for the sake of argument, a sum of £100 to a shareholder as dividend free of tax, it has also paid, assuming the rate of Income Tax to be 1*s.* 2*d.* in the £, a further sum of £6 3*s.* 10*d.* to the Government. As far as the shareholder is concerned his share is really £106 3*s.* 10*d.*, and the company pays £100 to him and £6 3*s.* 10*d.* to the Government as his agent and on his behalf. See the remarks of Lord Justice Swinfen Eady in *Brooke* v. *Commissioners of Inland Revenue*(1) ([1918], 1 K.B., at page 257), where he says: "Where the duty is paid by a company in respect of the gains and

(1) 7 T.C. 261.

" profits of its business, it pays the Income Tax as agents for its share-
" holders ", and Lord Justice Scrutton at page 270 says : " I am quite
" clear that a company, in paying Income Tax at the source at any rate,
" pays as agent of the shareholders."

For these reasons I think that the amount returnable for Super-tax purposes in the case of dividends paid free of Income-Tax is not the amount actually received, but that amount plus the Income Tax in respect of it, or, taking the hypothetical figures above given. £106 3*s*. 10*d*., not £100.

In the result the Appeal must be dismissed.

The Solicitor-General.—My Lord, the Appeal is dismissed with costs?

Mr. Justice Sankey.—Yes.

No. 909.—HIGH COURT OF JUSTICE (KING'S BENCH DIVISION).—15TH AND 16TH JUNE AND 13TH OCTOBER, 1932

COURT OF APPEAL.—13TH AND 14TH DECEMBER, 1932, AND 19TH JANUARY, 1933

HOUSE OF LORDS.—14TH, 16TH, 17TH, 22ND AND 23RD NOVEMBER, 1933, AND 1ST FEBRUARY, 1934

NEUMANN v. THE COMMISSIONERS OF INLAND REVENUE[1]

Sur-tax—Return of total income—Dividend paid without deduction of Income Tax by property-owning company out of rents received in excess of Schedule A assessments—Income Tax Act, 1918 (8 & 9 *Geo.* V, *c.* 40), *Rule* 20 *of the General Rules; Finance Act*, 1927 (17 & 18 *Geo.* V, *c.* 10), *Sections* 38 *and* 39; *Finance Act*, 1931 (21 & 22 *Geo.* V, *c.* 28), *Section* 7.

The Appellant was a shareholder in the Salisbury House Estate, Ltd. On the 4th April, 1930, *the House of Lords, in the case of* Salisbury House Estate, Ltd. *v.* Fry (15 T.C. 266), *decided that the rents of the company's properties, which greatly exceeded the annual values as assessed to Income Tax under Schedule A, were profits arising from the ownership of land, in respect of which the assessments under Schedule A were exhaustive, and that such rents in excess of the Schedule A assessments could not be included in assessments under Schedule D as trade receipts of the company.*

Pending the final decision in the case, the company had created a reserve fund representing a surplus of accumulated rents which remained in its hands after profits had been distributed to the amount of the Schedule A assessments on its properties. Immediately upon the decision of the House of Lords, the company distributed the whole of the reserve fund by way of dividend to its shareholders.

The dividend was described by the company, at the time of payment, as an "interim dividend of five per cent., free of tax", and the proportionate part paid to the Appellant, amounting to £4,275, was stated to be equivalent to a gross amount of £5,343 15s. 0d., less Income Tax £1,068 15s. 0d. Later, in consequence of the decision in Gimson *v.* Commissioners of Inland Revenue (15 T. C. 595), *the company informed the Appellant*

[1] Reported (K.B.) 49 T.L.R. 1, (C.A.) [1933] 1 K.B. 728 and (H.L.) [1934] A.C. 215.

that their earlier description of the dividend as a dividend of five per cent., free of tax, was erroneous, and that the dividend should have been described as a dividend of "five per cent., actual", being a distribution of untaxed income which was not taxable in the hands of the company or in his hands and, therefore, should not be included in any Income Tax or Sur-tax returns made by him.

The Appellant was assessed to Sur-tax in respect of the dividend in the amount of £5,343 15*s.* 0*d. He appealed, contending,* inter alia, *that the dividend had been paid out of profits which were not liable to Income Tax, and that accordingly there was no liability to Sur-tax. The Special Commissioners confirmed the assessment.*

Held, (a) *that the dividend was paid out of profits and gains charged on the company in accordance with the provisions of the Income Tax Acts, and that the dividend was income to be included in a return of total income for the purposes of Sur-tax;* (b) *that, although deduction of tax from the dividend was authorised by the Income Tax Acts, no deduction had in fact been made, and the sum paid to the Appellant,* viz., £4,275, *was not a "net amount" to which, by virtue of Section* 7 (2) *of the Finance Act,* 1931, *an addition was required in order to arrive at the amount returnable for Sur-tax purposes.*

CASE

Stated under the Finance Act, 1927, Section 42 (7) and the Income Tax Act, 1918, Section 149, by the Commissioners for the Special Purposes of the Income Tax Acts for the opinion of the King's Bench Division of the High Court of Justice.

1. At a meeting of the Commissioners for the Special Purposes of the Income Tax Acts held on the 21st October, 1931, Ludwig Neumann (hereinafter called "the Appellant") appealed against an assessment to Sur-tax made upon him for the year 1929–30.

2. On the basis of a letter dated the 4th April, 1930 (hereinafter set out in paragraph 7 hereof), from Salisbury House Estate, Limited (hereinafter called "the company"), the Appellant included in his return for the purposes of this assessment an item of £5,343 15*s.* 0*d.* which, according to the said letter, was the gross amount applicable to a net interim dividend of £4,275 received by the Appellant from the company in 1929–30. The assessment, as made upon him, included the said sum of £5,343 15*s.* 0*d.* Later, the Appellant was informed by the company that the said sum of £4,275 had been erroneously described by the company as a dividend of five per cent., free of tax, and that, in fact, it represented a sum, distributed out of the untaxed income of the company, which should not have been included in any Sur-tax return made by the Appellant. By a letter dated the 1st October,

1930, the Appellant informed the Clerk to the Special Commissioners that he had been notified that the dividend should not have been returned, that the company informed him that it was in communication with the Board of Inland Revenue on the matter, and that, in the meantime, the Appellant gave notice of appeal against the assessment.

3. The company has, year by year, paid ordinary annual dividends to its shareholders (including the Appellant) and, in the year 1929–30, the company declared such a dividend (in addition to making the interim distribution which is the subject of dispute in this Case) upon which no question arises in this appeal, it being admitted for the purposes of this appeal that the proportionate part thereof, to which the Appellant was entitled, was rightly included in the assessment. The only question for the opinion of the Court is whether or not, in the circumstances more particularly set out in paragraphs 4 to 8 hereof, the item of £5,343 15*s.* 0*d.* (or any part of it) was properly included in computing the assessment.

4. The company owns a property in the City of London, the rents from which greatly exceed the amount on which the company is assessed to Income Tax, Schedule A, in respect of the property. For several years, and at all times material to this appeal, both (*a*) the profits of the company available for dividend, and (*b*) the ordinary annual dividends of the company, have been greater than the amount on which Income Tax has been paid by the company. It had been contended on behalf of the Crown that the company was carrying on a trade and that, in computing its profits for the purposes of assessment under Schedule D, it was necessary to take into account all its receipts, including receipts from rents, an allowance being made for the amount of the assessment under Schedule A. Assessments under Schedule D were made upon the company upon this basis, against which the company appealed. It was held by the House of Lords on the 4th April, 1930, that the company was not so assessable and that liability to tax in respect of the rents was covered by the Schedule A assessments, and the rents could not be brought into the computation of any liability under Schedule D (*Salisbury House Estate, Ltd.* v. *Fry*, 15 T.C. 266).

5. While the above-mentioned litigation was pending, the company had put aside £18,325 out of its profits to the credit of an Income Tax reserve. The House of Lords' decision in favour of the company rendered that reserve no longer necessary, and the company at once, on the 4th April, 1930, declared and paid thereout a further dividend described at the time as an " interim dividend " of 5% free of tax ". It was not disputed by the Respondents that this sum of £18,325 was paid out of a surplus of accumulated rents which remained in the hands of the company, after profits had been distributed to the amount of any assessments made upon the company.

6. The resolution of the board of directors of the company reads as follows :—

" 4th April, 1930.

" Income Tax appeal.

" It was reported that the Crown's appeal to the House of " Lords against the judgment of the Court of Appeal had been " dismissed.

" Interim dividend.

" As a result of the above, it was resolved that an interim " dividend of 5% free of tax on account of the year ending " 25th December, 1930, be declared payable to-day."

7. As a result of this declaration of dividend, the Appellant received a cheque for £4,275 together with a letter from the company, dated the 4th April, 1930, in the following terms :—

" Salisbury House Estate, Limited,
" Salisbury House,
" Finsbury Circus,
" London, E.C.2,
4th April, 1930.

" L. Neumann, Esq.,
" Salisbury House,
" London Wall, E.C.2.

" Dear Sir,

" I hand you herewith cheque for £4,275 0*s*. 0*d*. in respect " of an interim dividend for the year ending 25th December, " 1930, of 5% free of tax, on the 85,500 shares registered in " your name.

" This dividend is equivalent to a gross " amount of £5,343 15 0

" *Less* Income Tax at 4*s*. in the 1068 15 0

" £4,275 0 0

" NOTE.—I hereby certify that the Income Tax deducted as " shown herein has been or will be duly paid to the proper " officer for the receipt of taxes and in the event of any " application being made for exemption from Income Tax, " this certificate can be produced to the Inland Revenue " authorities and should be retained for that purpose.

" Yours faithfully,
" (*Sgd.*) N. E. MUNNS,
" *Secretary*."

8. On the 9th May, 1930, the case of *Gimson* v. *The Commissioners of Inland Revenue*, 15 T.C. 595, was decided in the King's Bench Division and, in consequence of that decision, the company came to the conclusion that the terms of its directors' resolution and of its letter to shareholders of the 4th April, 1930, were wrong. After correspondence between the company and the Commissioners of Inland Revenue, in which the company vainly tried to persuade the Commissioners of Inland Revenue that the dividend in question fell within the authority of *Gimson's* case and was not income liable to Sur-tax in the hands of its shareholders, the company (which had previously informed its shareholders as to the attitude it was adopting in its correspondence with the Inland Revenue) sent to the Appellant and to its other shareholders a letter dated the 28th February, 1931, of which the material part was as follows :—

" Salisbury House Estate, Limited,
" Salisbury House,
" Finsbury Circus,
" London, E.C.2,
28th February, 1931.

" L. Neumann, Esq.,
" Salisbury House,
" London Wall, E.C.2.

" Dear Sir,

" With reference to my letter of 4th April, 1930, enclosing " a cheque in respect of an interim dividend for the year ending " 25th December, 1930, described as of an amount of 5% free " of tax, I have to inform you, in conformity with the opinion " of the company's legal advisers, that the dividend should have " been described as a dividend of 5% actual, being a distribution " of untaxed income, and that this income not having been " taxable in the hands of the company is not taxable in your " hands and should therefore not be included in any Income " Tax or Sur-tax returns made or to be made by you. Such " returns should include only what is ' income ' for Income Tax " purposes. The certificate at the foot of the letter of 4th April, " 1930, is hereby withdrawn and should accordingly be ignored " by you and, in place of the gross amount of the dividend as " stated in the letter, the following should be substituted, in " order to comply with Section 33 of the Finance Act, 1924 (if " applicable), *viz* :—

" Gross amount of dividend	£4,275 0 0
" Rate and amount of Income Tax appro- " priate thereto	Nil.
" Net dividend	£4,275 0 0

" At the same time I have to inform you that the Board of " Inland Revenue do not concur in this opinion."

9. It was contended by Counsel for the Appellant, *inter alia* :—

(*a*) that, since Sur-tax is an additional duty of Income Tax, no liability to Sur-tax could exist in respect of the dividend in question, unless the sum in question was liable to Income Tax in the hands of the company, and that the company, in fact, made the payment out of moneys which were not liable to Income Tax;

(*b*) that rents, as such, are not liable to Income Tax, but the liability to Income Tax is in respect of annual value only, and that the dividend in question was made by the company out of a surplus of accumulated rents which were available after distributing profits year by year to the full amount of the annual value on which the company was assessable;

(*c*) that the decision in *Gimson* v. *The Commissioners of Inland Revenue*, 15 T.C. 595, was applicable, and that the case of *Hamilton* v. *Commissioners of Inland Revenue*, [1931] 2 K.B. 495(1), was distinguishable;

(*d*) that, in any case, the matter was concluded in favour of the Appellant by Section 7 of the Finance Act, 1931, which was retrospective;

(*e*) that, in construing Section 7 of the Finance Act, 1931, regard should be had to Rules 19 and 21 respectively of the All Schedules Rules, Income Tax Act, 1918, and to the decisions in *Attorney-General* v. *Metropolitan Water Board*, 13 T.C. 294, and the *Luipaards Vlei Estate* case, 15 T.C. 573;

(*f*) that the dividend should not be included in a computation of the Appellant's total income for the purposes of Sur-tax 1929-30.

10. For the Crown it was contended :

(*a*) that the income of the company, as represented by rents, had been assessed to Income Tax under Schedule A of the Income Tax Act, 1918, the difference between the amount of the rents and the amount of the assessment being due to the measure applied under the said Schedule and the Valuation (Metropolis) Act, 1869, in ascertaining the amount of the assessment;

(*b*) that the said dividend had been paid out of the said income;

(*c*) that the said dividend was a dividend to which Section 7 of the Finance Act, 1931, applied;

(*d*) that the company, on paying the said dividend, had deducted tax at the standard rate on the gross amount of the dividend paid;

(1) 16 T.C. 213.

(*e*) that the gross amount of the said dividend had been properly included in the Sur-tax return and assessment, and that the assessment should be confirmed;

(*f*) that the case was concluded by the decision in *Hamilton* v. *Commissioners of Inland Revenue*, [1931] 2 K.B. 495(1);

(*g*) that the case of *Gimson* v. *The Commissioners of Inland Revenue*, 15 T.C. 595, was distinguishable.

11. The following cases were referred to:—

Salisbury House Estate, Ltd. v. *Fry*, 15 T.C. 266.
Gimson v. *The Commissioners of Inland Revenue*, 15 T.C. 595.
Rossdale v. *Fryer*, [1922] 2 K.B. 303.
Miller (Lady) v. *The Commissioners of Inland Revenue*, 15 T.C. 25.
Hamilton v. *The Commissioners of Inland Revenue*, [1931] 2 K.B. 495(1).
Attorney-General v. *Metropolitan Water Board*, 13 T.C. 294.
Luipaard's Vlei Estate & Gold Mining Co., Ltd. v. *Commissioners of Inland Revenue*, 15 T.C. 573.
Attorney-General v. *London County Council*, 4 T.C. 265.

12. We, the Commissioners who heard the appeal, held that the dividend in question formed part of the Appellant's total income for the purposes of Sur-tax for the year 1929–30 and we confirmed the assessment.

13. The Appellant, immediately upon the determination of the appeal, declared to us his dissatisfaction therewith as being erroneous in point of law and in due course required us to state a Case for the opinion of the High Court pursuant to the Finance Act, 1927, Section 42 (7) and the Income Tax Act, 1918, Section 149, which Case we have stated and do sign accordingly.

H. M. SANDERS,
P. WILLIAMSON,
} Commissioners for the Special Purposes of the Income Tax Acts.

York House,
23, Kingsway,
London, W.C.2.
12th March, 1932.

The case came before Finlay, J., in the King's Bench Division on the 15th and 16th June, 1932, when judgment was reserved. On the 13th October, 1932, judgment was given against the Crown, with costs.

Mr. A. M. Latter, K.C., and Mr. J. H. Bowe appeared as Counsel for the Appellant and the Attorney-General (Sir Thomas Inskip, K.C.) and Mr. R. P. Hills for the Crown.

---

(1) 16 T.C. 213.

JUDGMENT.

Finlay, J.—I regret the delay in delivering this judgment, due to the fact that I was detained on circuit until the very last day of last term.

The point is one not, I should think, likely to arise frequently, but it is a curious point and I think rather a difficult one. It arises on a Case stated by the Commissioners for Special Purposes and the facts are very clearly seen from the Case, facts which are certainly rather curious. The second paragraph of the Case, which I will read because it sets out the thing very clearly, is this: " On the basis of a letter dated the 4th April, 1930 . . . . " the Appellant included in his return for the purposes of this " assessment "—that is an assessment on him to Sur-tax—" an " item of £5,343 15*s*. 0*d*. which, according to the said letter, was " the gross amount applicable to a net interim dividend of £4,275 " received by the Appellant from the company in 1929–30. The " assessment, as made upon him," included the said sum of " £5,343 15*s*. 0*d*. Later, the Appellant was informed by the " company that the said sum of £4,275 had been erroneously " described by the company as a dividend of five per cent. free " of tax, and that in fact it represented a sum, distributed out " of the untaxed income of the company, which should not have " been included in any Sur-tax return made by the Appellant. " By a letter dated the 1st October, 1930, the Appellant informed " the Clerk to the Special Commissioners that he had been notified " that the dividend should not have been returned, that the com- " pany informed him that it was in communication with the Board " of Inland Revenue on the matter, and that, in the meantime, the " Appellant gave notice of appeal . . . . . "

The facts are set out in the following paragraphs which I will also read: " 3. The company has year by year paid ordinary " annual dividends to its shareholders (including the Appellant) " and in the year 1929–30 the company declared such a dividend " (in addition to making the interim distribution which is the " subject of dispute in this Case) upon which no question arises in " this appeal, it being admitted for the purposes of this appeal that " the proportionate part thereof, to which the Appellant was " entitled, was rightly included in the assessment. The only ques- " tion for the opinion of the Court is whether or not, in the " circumstances more particularly set out in paragraphs 4 to 8 " hereof, the item of £5,343 15*s*. 0*d*. (or any part of it) was " properly included in computing the assessment. 4. The company " owns a property in the City of London the rents from which " greatly exceed the amount on which the company is assessed " to Income Tax, Schedule A, in respect of the property. For " several years, and at all times material to this appeal both (*a*) the " profits of the company available for dividend, and (*b*) the " ordinary annual dividends of the company, have been greater

(Finlay, J.)

" than the amount on which Income Tax has been paid by the " company. It had been contended on behalf of the Crown that " the company was carrying on a trade and that in computing its " profits for the purposes of assessment under Schedule D it was " necessary to take into account all its receipts, including receipts " from rents, an allowance being made for the amount of the " assessment under Schedule A. Assessments under Schedule D " were made upon the company upon this basis, against which the " company appealed. It was held by the House of Lords on the " 4th April, 1930, that the company was not so assessable and " that liability to tax in respect of the rents was covered by the " Schedule A assessments, and the rents could not be brought into " the computation of any liability under Schedule D. 5. While " the above-mentioned litigation was pending, the company had put " aside £18,325 out of its profits to the credit of an Income Tax " reserve. The House of Lords' decision in favour of the company " rendered that reserve no longer necessary, and the company at " once, on the 4th April, 1930, declared and paid thereout a " further dividend described at the time as an ' interim dividend " ' of five per cent. free of tax.' It was not disputed by the " Respondents that this sum of £18,325 was paid out of a surplus " of accumulated rents which remained in the hands of the com- " pany, after profits had been distributed to the amount of any " assessments made upon the company." Then there follow the resolution and a letter from the secretary of the company to the Appellant enclosing the sum due to him and saying: " This " dividend is equivalent to a gross amount of £5,343 15*s*. 0*d*. less " Income Tax at 4*s*. in the £, £1,068 15*s*. 0*d*." In consequence apparently of a decision of Mr. Justice Rowlatt in a case of *Gimson* v. *The Commissioners of Inland Revenue*(1), the company then came to the conclusion that the terms of the resolution were wrong; they found themselves at issue with the Inland Revenue upon the matter and they wrote accordingly (and quite properly) to the Appellant another letter in which they said that they now found their former view was erroneous and " that the dividend should " have been described as a dividend of five per cent. actual, being a " distribution of untaxed income, and that this income not having " been taxable in the hands of the company is not taxable in your " hands and should therefore not be included in any Income Tax or " Sur-tax returns made or to be made by you. Such returns should " include only what is ' income ' for Income Tax purposes." The letter went on, quite properly, to say that that, which was the advice which the company had received, was not assented to by the Board of Inland Revenue.

The position is a peculiar one. The case in 15 T.C. 266(2) decides (and indeed I think it is familiar law) that there is no

(1) 15 T.C. 595. (2) Salisbury House Estate, Ltd. v. Fry.

charge on rents as such; the charge is a charge under Schedule A and is on the annual value. The fact that the annual value is often, though not always, measured by rent, is not to the point. Here the rents exceeded, and very substantially exceeded, the annual value, that annual value being of course measured, as it must be measured, in the manner which the statute directs, and the statute directs a particular measurement where the property happens to be, as this property was, in London. It was decided that the excess of rent received was not liable to tax, not under Schedule A because that had been exhausted, and not under Schedule D—and this was the exact point that the House of Lords decided—because the rents could not be brought in as being the profits of any trade or business being carried on. I may in that connection refer, without reading it, to a passage in the judgment of Lord Justice Scrutton in *Rossdale* v. *Fryer*, [1922] 2 K.B. 303 at page 312, where he alludes to the fact that rents received, so to speak, in excess of annual value are not liable to tax.

Now, the matter depends of course upon the Rules. There is a series of Rules, Rules 19 to 21 of the General Rules applicable to all the Schedules. Rules 19 and 21 relate to annual sums payable (*a*) out of profits brought into charge and (*b*) out of profits not wholly charged. Rule 20 is the Rule applicable to dividends and it must be considered as amended by Section 7 of the Act of 1931. It is necessary in the light of that Rule to consider what this distribution is. It seems to me that it is a distribution which is not made out of profits and gains which are charged to tax. It follows, of course, that the company not having borne tax—in my opinion, it has not borne tax on these sums—cannot pass on tax not borne by itself to the shareholders. Manifestly the shareholder cannot be made to bear a share of that tax which the company has not borne and is not liable to bear. The process by which the shareholder is made, so to speak, to bear his share of tax is too familiar to need development; it has been discussed in a good many recent cases. Of course, the company in no way pays as agent for a shareholder: it pays its own tax and then by the appropriate machinery it may pass on the tax which it, and it alone, is liable to bear and has borne. Here, if I am right, this distribution is a distribution of a fund which is not liable to tax and it seems to me to follow, and to follow inevitably, that the recipient is not liable to tax. He is not liable to tax by deduction for the reason that I have just indicated, and it cannot, I think, be suggested that he is liable to Income Tax by direct assessment. The analogy is not exact, but the fund may perhaps be compared with the fund produced by sales of land in a very well-known case, the *Hudson's Bay Company* case, 5 T.C. 424. There there was a dividend distributed, and the dividend was made up partly of ordinary trading profits and partly of the proceeds of sale of land.

(Finlay, J.)

In that case it was held that the fund produced by the sale of land was not the profits of any trade and was not liable to taxation. I apprehend it would be quite clear that in that case the sum distributed would not be liable to any taxation either by way of Income Tax or Super-tax, or Sur-tax, as it is now called, in the hand of the recipient. I repeat the cases are not analogous, but the principle seems to me to be rather the same here.

If it is true that this sum is not liable to tax, can it be liable to the additional duty of Income Tax called Super-tax, the place of which has now been taken by Sur-tax? It seems to me that it cannot be so liable, and for an extremely simple reason, a reason which applies equally to Super-tax and to its successor, Sur-tax. These additional taxes, additional duties of Income Tax, or whatever they are called—and Super-tax was, I think, called an additional duty of Income Tax—are levied on what I might conveniently call "Income Tax income", and it is impossible to go outside the ambit of income liable to Income Tax and to bring in that which in my view is not liable to Income Tax.

Various authorities were cited to me. None appears to me to be directly in point, but I think that the reasoning of Mr. Justice Rowlatt in *Gimson's* case(1) supports the view which I take. With regard to a case to which my attention was called and which indeed it was suggested, I think, governed the present, *F. H. Hamilton* v. *The Commissioners of Inland Revenue*(2), I have read carefully the judgments in the Court of Appeal in that case and they do not seem to me to touch the present case at all. The point there decided, as I think, was a different point and I do not think that, carefully considered, that case directly, at all events, bears upon the case before me.

As I have indicated, the case is a peculiar one and, in my view, it is a case which, while, of course, one derives great assistance from the authorities and from the principles laid down, is not directly covered by any authority. In these circumstances, one has, of course, to endeavour to look at the thing on principle and to consider the Sections. I have done that and the result is that though I regard the case, as I have already indicated, with some difficulty and some doubt, I differ from the view which commended itself to the Special Commissioners and this appeal must be allowed.

Mr. Latter.—The appeal will be allowed with costs, my Lord?

Finlay, J.—Yes, the appeal will be allowed with costs.

Mr. Latter.—Would your Lordship make the usual Order for the repayment of the tax that has been paid, with interest?

Finlay, J.—I suppose that is right, Mr. Hills?

---

(1) 15 T.C. 595. (2) 16 T.C. 213.

Mr. Hills.—Yes, that would be quite in order; but I did want to say a word—I do not know whether my friend has any views on the subject—on the question of the rate of interest, which has been very much altered in recent times. I think about a year or two years ago it was four and a half per cent., but I should submit it ought not to be more than three per cent. now.

Finlay, J.—Has Mr. Justice Rowlatt given any recent decision with regard to that interest?

Mr. Latter.—I think the last one was four and a half per cent. or five per cent. I can understand my friend's point since the Conversion operations. I should have thought it ought to be three and a half per cent.

Finlay, J.—I should think three and a half per cent. is reasonable.

The Crown having appealed against the decision in the King's Bench Division, the case came before the Court of Appeal (Lord Hanworth, *M.R.*, and Slesser and Romer, *L.JJ.*) on the 13th and 14th December, 1932, when judgment was reserved. On the 19th January, 1933, judgment was given unanimously in favour of the Crown, with costs, reversing the decision of the Court below. The Court held, however, that the assessment on the Appellant should be made in the amount of the dividend actually received by him (£4,275) and not, as in the assessment appealed against, in the amount arrived at after the addition thereto of the appropriate amount of Income Tax (£5,343 15*s.* 0*d.*).

The Attorney-General (Sir Thomas Inskip, K.C.) and Mr. R. P. Hills appeared as Counsel for the Crown and Mr. A. M. Latter, K.C., and Mr. J. H. Bowe for the Respondent.

JUDGMENT.

Lord Hanworth, M.R.—On 4th April, 1930, the Respondent to this appeal was sent a cheque for £4,275 0*s.* 0*d.* by the Salisbury House Estate Company, Limited, as the quota due to him out of a sum reserved by the company to meet a possible liability which might have fallen upon it if the House of Lords had reversed the decision of this Court reported as *Fry* v. *Salisbury House Estate, Limited*, [1930] 1 K.B. 304(1). The decision was that day affirmed, [1930] A.C. 432. When sending this sum to the Respondent the company wrote treating it as a sum from which tax had been deducted, and if tax at the appropriate rate, namely, 4*s.*, had been taken from it, the gross amount of the Respondent's quota would have been £4,275 plus £1,068 15*s.*, equal to a total of £5,343 15*s.* 0*d.* On the 9th May, 1930, the case of *Gimson* v. *Commissioners of Inland Revenue*(2) was decided by Mr. Justice

(1) 15 T.C. 266. (2) 15 T.C. 595.

(Lord Hanworth, M.R.)

Rowlatt, when he held that where no payment of Income Tax had been made upon, or deducted from, the sum paid over to the shareholder, no charge for Sur-tax could be made upon it. Thereupon the directors amended the note accompanying the payment of the £4,275 and explained that there was no Income Tax appropriate to it, and therefore that it was a net sum receivable by the shareholder, the present Respondent.

In accordance with the terms of the letter of the 4th April, 1930, the Respondent included in his return the larger sum of £5,343 15*s*. 0*d*., and he was duly assessed upon it to Sur-tax. Afterwards, upon the decision of *Gimson* v. *Commissioners of Inland Revenue* becoming known, he claimed that Sur-tax was not payable upon either the sum of £5,343 15*s*. 0*d*. or £4,275, and he appealed against the assessment made upon him. The Commissioners for the Special Purposes of the Income Tax Acts heard the appeal and confirmed the assessment. From that decision the Respondent appealed to Mr. Justice Finlay, who reversed the decision of the Commissioners and discharged the assessment. The Crown now appeal to this Court, and the question to be decided is whether the Respondent is liable to pay Sur-tax, either on the £4,275 actually received, or on the larger sum of £5,343 15*s*. 0*d*., as being the sum reached if the amount paid over is to be treated as having borne Income Tax.

In view of the fact that the Respondent has in fact received £4,275, it will be convenient to state the grounds on which he claims, and the learned Judge has held, that he is entitled to immunity in respect of it from Sur-tax. It is argued that the £4,275 was not paid out of profits and gains charged to Income Tax, and that no Sur-tax can be charged on sums in respect of which no Income Tax has been paid. The learned Judge held that(1) "it "is a distribution which is not made out of profits and gains which "are charged to tax. It follows, of course, that the company not "having borne tax—and in my opinion it has not borne tax on "these sums—cannot pass on tax not borne by themselves to the "shareholders. Manifestly, the shareholders cannot be made to "bear a share of that tax which the company has not borne and is "not liable to bear."

This statement appears to me to overlook certain principles of Income Tax law which are not in doubt. For Income Tax purposes, the company and a shareholder are separate entities. No doubt for the purposes of collection, the system of deduction at the source has been long established and maintained. But the relations of the company and of the shareholder to the Inland Revenue are separate and distinct. A shareholder may have quite independent rights as against the Crown, both in the matter of his liability at all and of certain deductions to be made from his liability which

(1) *See* page 341 *ante*.

are appropriate to him alone. There is no agency on the part of the company as between it and the shareholder; see per Lord Cave in *Commissioners of Inland Revenue* v. *Blott* where he says(1): "a "company paying Income Tax on its profits does not pay it as "agent for its shareholders. It pays it as a taxpayer. . . . . But "no agency, properly so-called, is involved." The company pays tax on the full amount of its profits or gains "before any dividend "thereof is made," and the amount deducted from any dividend paid over to a shareholder is the amount at the standard rate on the gross amount of the dividend so paid over and not a proportionate part of the tax paid by the company. (See *Hamilton* v. *Commissioners of Inland Revenue*, [1931] 2 K.B. 495(2), and also *Commissioners of Inland Revenue* v. *Dalgety & Co., Ltd.*, [1930] 1 K.B. 1, at pages 25 and 26(3).)

Next, I do not think that it is right to treat the corpus of £18,325—the "surplus of accumulated rents which remained in the "hands of the company" (see paragraph 5 of the Case)—as moneys which were not liable to Income Tax. The surplus remained from the profit rents charged by the Salisbury House Company, and the company paid Income Tax under Schedule A on the annual value of the properties out of which those profits accrued to the company. The measurement was under Schedule A, but the tax, whether under one Schedule or another, is a tax charged in respect of all property, profits or gains respectively described or comprised in the Schedules marked A, B, C, D and E (See Section 1 of the Act of 1918). "It is one tax, not a collection "of taxes essentially distinct," measured "differently under each "Schedule." (See per Lord Macnaghten in *London County Council* v. *Attorney-General* [1901] A.C., pages 35 and 36(4).) If the rents had not paid tax according to the appropriate measure, they would have been caught under Case VI of Schedule D, which charges tax "in respect of any annual profits or gains not falling "under any of the foregoing Cases, and not charged by virtue of "any other Schedule." This is made clear by the speeches in the case of *Fry* v. *Salisbury House Estate, Ltd.*, [1930] A.C. 432, of Lord Dunedin, who said(5) "The income of the Respondents, as "represented by rents, is admittedly assessed, and properly "assessed, under Schedule A;" and of Lord Warrington, who said(6) "Now the effect of the Crown's contention if it be correct "would be indirectly to convert this tax on annual value to a tax "on rents." The passage quoted from the judgment of Lord Justice Scrutton in *Rossdale* v. *Fryer*, [1922] 2 K.B. 303, is not contrary to the above, for at page 313 he makes it clear "that the "tax on land is not according to the actual receipts but the assessment . . . . the actual rent is not a sum on which the landlord

(1) 8 T.C. 101 at p. 136. (2) 16 T.C. 213. (3) 15 T.C. 216, at pp. 230–231.
(4) 4 T.C. 265, at pp. 293–294. (5) 15 T.C. 266 at p. 307. (6) *Ibid.* at p. 315.

(Lord Hanworth, M.R.)

" can be taxed; . . . Schedule A only relates to the tax on assess-
" ment, and not on actual rent." When profits and gains were estimated on a three years' average, the measure of the average may have in any year differed from the receipts of the year of assessment.

In the present case there is no question but that £4,275 was received by the Respondent in the year in question. He had to return his total income, and by Section 38 (1) (*b*) of the Finance Act, 1927, pay Sur-tax upon the amount of it which is in excess of a certain limit. The expression " total income " in relation to any person is defined by Sub-section (2) to mean " the total income " of that person from all sources estimated, as the case may be, " either in accordance with the provisions of the Income Tax Acts " as they apply to income tax chargeable at the standard rate or " in accordance with those provisions as they apply to sur-tax." In my opinion, the Respondent's " total income " estimated upon either of these alternatives must include this £4,275 received by him. He must estimate his own income received by him, and upon that basis the decision of the Commissioners was right and must be restored.

In *Gimson's* case(1) the sum of £35 was received by the subject, and was an amount paid on the division of a sum in respect of which Income Tax had not, owing to the principles of admeasurement, been payable, or paid. Mr. Justice Rowlatt explains (see *Hamilton* v. *C.I.R.*, [1931] 2 K.B. at page 504(2)) that the decision had no reference to such a question as was under consideration in *Hamilton's* case and is under consideration here, namely, whether the entity of the shareholder and company must be considered separately. But, in my judgment, Mr. Justice Rowlatt applied a wrong test in *Gimson's* case. The liability to Sur-tax does not depend upon, and cannot be resolved only by, ascertaining whether Income Tax has been paid on an item claimed to be included in a Sur-tax return, and if it has not paid Income Tax, then the item is to fall out of the Sur-tax return. That principle is contrary to the terms of Section 38, Sub-sections (1) and (2), already referred to. Nor do I find any authority for it in what was said by Lord Sands in *Lady Miller's* case, 15 T.C. at page 60, and approved by Lord Warrington at page 84, with which we were pressed in argument. It must be remembered that what was under consideration in that case was whether the enjoyment of certain premises by a tenant for life could be estimated and brought into account for the purpose of her assessment to Super-tax; and it was held that the life tenant was properly assessed upon a sum which included both the assessments of the mansion house and grounds under Schedules A and B, and the amounts of the payments for rates upon the premises made by the trustees of the settlement.

(1) 15 T.C. 595. (2) 16 T.C. at pp. 221/2.

(Lord Hanworth, M.R.)

The truth is that confusion is introduced into a case like *Gimson's* or the present by too great attention being paid to the mode of collection by deduction, under Rules 19 and 21 and Rule 20, as now to be interpreted by Section 7 (1) and (2) of the Finance Act, 1931. The cases of the *Metropolitan Water Board*, [1928] 1 K.B. 833(1), and of *Luipaard's Vlei Estate and Gold Mining Company*, [1930] 1 K.B. 593(2), illustrate the difficulties that arise in construing and applying the Rules 19, 20 and 21. I agree with the examination of the former case to which Lord Justice Romer has in his judgment subjected it, and it does not seem to me to be necessary to examine it further. Section 7 (1) was passed to avoid any danger to the Revenue such as was suggested in the *Metropolitan Water Board* case, and I hold that the sum of £18,325 has not been deemed immune from Income Tax. Though not directly charged, as it would have been if it had been a profit made within the ambit of Schedule D, nevertheless it belonged to, and arose from, a source which had suffered its appropriate charge to tax under Schedule A.

The fact that no deduction was made from the sum paid over to the Respondent, but that the £4,275 was the quota due to him upon a direct and simple division of the corpus arising from the accumulated rents, renders Section 7 (1) and (2) inapplicable. The deduction that is " authorised " under Sub-section (1) was not exercised, and it is not necessary to consider whether it could have been exercised. Equally there is no occasion to alter the figure actually received into another under Section 7 (2). The sum paid was £4,275 *simpliciter* and is not to be " deemed to represent " another amount.

For these reasons, in my judgment, the appeal should be allowed with costs here and below, and an assessment made upon the Respondent in the sum of £4,275.

Slesser, L.J.—On 4th April, 1930, the directors of the Salisbury House Estate, Limited, carried the following resolution: " Income " Tax appeal. It was reported that the Crown's appeal to the " House of Lords against the judgment of the Court of Appeal had " been dismissed. Interim dividend. As a result of the above, it " was resolved that an interim dividend of 5 per cent. free of tax " on account of the year ending 25th December, 1930, be declared " payable today." On the same day, they sent Mr. Neumann a cheque for £4,275, stated to be as follows:

" This dividend is equivalent to a gross			
" amount of	£5,343	15	0
" *Less* Income Tax at 4*s.* in the £ ...	£1,068	15	0
	£4,275	0	0."

(1) Attorney-General v. Metropolitan Water Board, 13 T.C. 294.
(2) Luipaard's Vlei Estate and Gold Mining Co., Ltd. v. Commissioners of Inland Revenue, 15 T.C. 573.

(Slesser, L.J.)

This dividend was the Respondent's share of an Income Tax reserve of the company of £18,325 which they had held back in case they might have been called upon to pay more Income Tax had the House of Lords decided in favour of the contention of the Crown that the company were liable to be assessed on their rents received to be regarded as profits and gains under Schedule D. In fact, the company succeeded and the House of Lords affirmed the decision of this Court that the rents of the company were profits arising from the ownership of land in respect of which the assessment under Schedule A was exhaustive, so that the reserve of £18,325 became distributable as part of a surplus of accumulated funds or rents. In these circumstances, the Respondent included in his return for assessment for Sur-tax for 1929–30 the sum of £5,343 15*s*. 0*d*.

On 28th February, 1931, the company wrote to the Respondent saying that " the dividend should have been described as a dividend " of 5 per cent. actual, being a distribution of untaxed income, and " that this income not having been taxable in the hands of the " company is not taxable in your hands and should, therefore, not " be included in any Income Tax or Sur-tax returns made or to be " made by you." They accordingly substituted for the statement of dividend above-mentioned the following:

" Gross amount of dividend	£4,275 0 0
" Rate and amount of Income Tax appro- " priate thereto	nil
" Net dividend	£4,275 0 0."

The Crown, nevertheless, claimed that the whole sum of £5,343 15*s*. 0*d*. or, alternatively, the sum of £4,275, formed part of the Appellant's total income for the purposes of Sur-tax, and the Commissioners confirmed the assessment as originally made by the Respondent for the full amount. The Respondent appealed, and Mr. Justice Finlay allowed the appeal as to the whole sum. From his decision appeal has been brought by the Crown to this Court.

In the first place, it is said that, whether the sum of £18,325 is or is not liable to Income Tax beyond the Schedule A assessment already made, the liability of the Respondent for £4,275 remains and, in my view, the Crown are right in this contention. By Section 38 (2) of the Finance Act, 1927, the total income means " the total income of that person from all sources estimated, as " the case may be, either in accordance with the provisions of the " Income Tax Acts . . . . or in accordance with those provisions " as they apply to Sur-tax." I am unable to see why this sum of £4,275 was not a part of the Respondent's total income.

(Sleesser, L.J.)

The learned Judge has come to the conclusion that the distribution " is a distribution of a fund which is not liable to tax "(1), and, he says that : " It seems to me to follow, and to follow inevitably, that the recipient is not liable to tax." He continued : " It " cannot, I think, be suggested that he is liable to Income Tax by " direct assessment." I am unable to accept this conclusion. Because the liability of the company in respect of their profits is to be ascertained under Schedule A in regard to their profits arising from the ownership of land, it does not follow that the individual recipient of a dividend is not directly assessable under Schedule D as being in receipt of a profit or gain.

It is true that in *Gimson* v. *Commissioners of Inland Revenue*, 15 T.C. 595, at page 601, Mr. Justice Rowlatt said : " He " (the shareholder) " can only be liable to Super-tax in respect of a " dividend which is taxable." But this view fails in my opinion sufficiently to distinguish between the company and its shareholders. In *Hamilton* v. *Commissioners of Inland Revenue*, [1931] 2 K.B. 495, Lord Hanworth, *M.R.*, at page 517, said(2) : " They " —the company and shareholder—" are two separate and different " entities, and the shareholder is not merely paying an aliquot part " of the taxation imposed upon the company." And, again(3) : " I think it is plain that the taxpayer must be treated as a separate " entity, the company being treated as a collector, as has been said " in one of the cases, for and on behalf of the Crown." The principle stated in *Blott's* case, [1921] 2 A.C. 171, by Lord Cave, that(4) : " A company paying Income Tax on its profits does not pay " it as agent for its shareholders," and the *Scottish Union* case, [1921] 1 A.C. 172(5), and, indeed, the whole current of authority, establish the position that, notwithstanding the special powers of deduction given to companies in appropriate cases under the Rules in the Income Tax Acts, and by Section 7 of the Finance Act, 1931, such powers do not operate to prevent the recipient of the profit or gain in the form of dividend from being liable to Income Tax by direct assessment.

The learned Judge was influenced in his decision by *Gimson's* case, which I have already mentioned. But, in my view, that decision cannot be supported so far as it is here relied upon by Mr. Justice Finlay. In that case, the Attorney-General had said that : " If you get a dividend which does somehow or other come to " the man from a fund which is not taxed, it became an annual payment charged with tax under Schedule D." Mr. Justice Rowlatt refused to accept this view, but, in my opinion, it is correct, and the source of the profit or gain which the individual receives is not material when the liability of the individual to pay tax on the

(1) *See* page 341 *ante*. (2) 16 T.C. at p. 232. (3) *Ibid.* at p. 233.
(4) Commissioners of Inland Revenue v. Blott, 8 T.C. 101, at p. 136.
(5) Scottish Union and National Insurance Co. v. New Zealand and Australian Land Co., Ltd.

(Slesser, L.J.)

profit or gain is considered. Nor do I see that the liability to Sur-tax is to be ascertained otherwise than in accordance with Sections 38 (1) and 38 (2) of the Finance Act, 1927, which Sections would be satisfied by requiring the return for Sur-tax to include the sum of £4,275.

On the other hand, I am unable to see that the Crown can claim more than this sum. And to the extent of the difference between that sum and £5,343 15*s*. 0*d*. the Commissioners were wrong. If the sum to be returned is the sum actually received, it is the lesser and not the larger sum. I do not think that the sum actually received can here be deemed to represent the larger amount, for the reasons stated by my Lord and by Lord Justice Romer, with which reasons I concur.

Romer, L.J.—It has been laid down on more than one occasion that for the purposes of taxation, just as for all other purposes, an incorporated company is one entity and its shareholders are separate and distinct entities. The most recent case in which this principle was approved and applied is that of *Hamilton* v. *Commissioners of Inland Revenue*, [1931] 2 K.B. 495(1), a decision of this Court. Stated shortly, the question in that case was whether a company when distributing a sum as dividend among its shareholders could deduct a greater sum in respect of Income Tax than the company had itself been charged with for such tax in respect of the sum so distributed. It was held that there was no connection whatever between the two taxes, that the company was one taxpayer and the shareholders were separate and distinct taxpayers, and that the company was entitled to deduct from the dividends paid Income Tax at the then current rate, regardless of the rate at which Income Tax had been paid by the company upon the profits from which the sum distributed had been derived. In the case of an individual A, who pays an annuity to another individual B, A is one taxpayer, and B is another, and the amount or rate of Income Tax chargeable in respect of B's annuity depends in no way whatsoever upon the amount or rate of Income Tax paid by A. The question of what A himself pays as Income Tax is only material for the purpose of ascertaining how the Income Tax on B's annuity is to be collected, as will presently appear. Now, the case is precisely the same if an incorporated company be substituted for A and its dividend receiving shareholders for B.

At this stage, however, it is necessary to refer to the decision of Mr. Justice Rowlatt in *Gimson* v. *Commissioners of Inland Revenue*, 15 T.C. 595. In that case an incorporated company had declared a dividend of £5 per cent. "actual" on its ordinary shares. A shareholder who held £1,500 ordinary shares received a sum of £75 without any deduction. Of this sum £40 represented a capital payment. But a question arose

(1) 16 T.C. 213.

(Romer, L.J.)

as to the remaining £35 for the purpose of ascertaining the shareholder's liability in respect of Super-tax. It seems to have been contended in the first instance that the shareholder must be deemed to have been paid £35 free of tax and was therefore assessable to Super-tax in respect of £44 as representing the gross dividend. In the argument before Mr. Justice Rowlatt, however, the Commissioners took up the position that the £35 was the amount of the gross dividend in respect of which the shareholder was himself directly assessable to Income Tax or from which the company ought to have deducted the tax at source. In ordinary circumstances the question whether the shareholder should have been assessed to Super-tax on £44 or £35 would or might itself depend upon the question whether or not the dividend was payable out of profits or gains of the company brought into charge, as will appear later. The shareholder, however, resisted assessment in either amount upon the ground that the £35 had been paid by the company out of a fund that in the hands of the company was not (as indeed was conceded) chargeable to Income Tax at all, and accordingly was not chargeable to Income Tax when paid over to the shareholders. This argument prevailed before the learned Judge. He said, speaking of the shareholder in question(1): "If "this gentleman had received this . . . . income himself and had "been liable to Income Tax in nil because of the regulations affecting "measurement, his income would not be subject-matter on which "he could . . . . pay Super-tax." Pausing there, no exception can, of course, be taken to what the learned Judge said. But he went on as follows: "So in the case of a company, although the "Attorney-General very properly referred to what I said in *Blott's* "case(2) which is a material case, although the case of a company is "different, in essence it is the same . . . . he can only be liable "to Super-tax in respect of a dividend which is taxable." Now this passage seems to indicate that a dividend is not taxable when the fund out of which it is paid is not taxable. With all respect to the learned Judge, this is wrong. It is contrary to the principle upon which *Hamilton's* case was decided and which had been enunciated in earlier authorities. A dividend (in which term, of course, I do not include a capital distribution) is taxable because it is charged with Income Tax by virtue of Schedule D. The fund out of which it is paid may be taxable under that Schedule or under one of the others. But the fact that the fund is taxable at a different rate or under a different Schedule involving a different method of computation for tax purposes is beside the mark, just as it would be beside the mark if it were an annuity or interest on a debenture that was being paid and not a dividend. In my judgment, *Gimson's* case was wrongly decided, and ought to be overruled.

(1) 15 T.C. at p. 601. (2) 8 T.C. 101.

(Romer, L.J.)

To return to the present case, it is said by the Respondent and was not disputed by the Crown, that the sum distributed by the company of which the £4,275 formed the Respondent's proportionate share, was paid out of a surplus of accumulated rents which remained in the hands of the company after profits had been distributed to the amount of any assessments made upon the company. I do not know how anyone could say that a sum of money in the company's coffers represented rents, but if the word "fund" be substituted for the words "surplus of accumulated rents", it is no doubt an accurate statement. The matter is, however, of no importance to the question with which I am dealing. For, whatever was the source of that fund, the dividend, not being a capital distribution, was chargeable with Income Tax under Schedule D, and the fact (if fact it be) that the fund in the hands of the company had not been brought into charge when ascertaining the company's own liability to Income Tax is, in my judgment and for the reasons that I have given, a wholly irrelevant consideration.

For the purpose, however, of ascertaining what is to be considered for the purposes of Sur-tax the gross amount of that dividend, the fact possesses considerable importance. Had the payment to the Respondent been a payment of interest on debenture stock and not a dividend, the question whether the payment was or was not made out of profits and gains of the company brought into charge would be irrelevant for the purpose of the assessment of the Respondent to Sur-tax. For in either case Income Tax would be deductible by the company either by virtue of Rule 19 or by virtue of Rule 21 of the All Schedules Rules in the Income Tax Act of 1918. If deducted under Rule 19, the company could retain the tax for its own benefit; if under Rule 21, the company would have to account for the tax to the Crown. In either case, however, the Respondent would, of course, be assessed for Sur-tax in the gross amount of the interest paid. A dividend stands, however, on a somewhat different footing, for the deduction of the tax on payment was, before the passing of the Finance Act, 1931, governed by Rule 20 of the All Schedules Rules. The words of that Rule were difficult to construe. As I ventured to point out in *Hamilton's* case(1), the Rule, if construed strictly, only authorised the deduction of the tax from a dividend paid out of the profits or gains in respect of which the company was chargeable, and would not apply to a dividend paid out of profits and gains in respect of which the company was not chargeable. I should, however, but for Section 7 of the Finance Act of 1931, have been prepared to treat the Rule as applicable to all dividends paid by a company, even when paid out of profits and gains not brought into charge. That Section renders it difficult or, rather, impossible to do so.

(1) 16 T.C. at pp. 234/5.

(Romer, L.J.)

Before dealing with that Section, however, it is necessary to point out another difficulty that might formerly have occurred in the case of the payment of a dividend. As a rule, the resolution declaring a dividend makes it clear whether it is going to be paid tax free or after deduction of tax. But suppose the resolution is silent upon the matter and the dividend declared is paid by the company in full. Is the dividend to be treated as gross or net? Rule 20 did not make it compulsory upon the company to deduct the tax even in the case of a dividend paid out of profits and gains not brought into charge, and it certainly seems doubtful in view of the language of that Rule whether Rule 21 applies to a dividend at all. This particular difficulty has to a large extent been removed by Section 7 (2) of the Finance Act, 1931. But Sub-section (1) of that Section creates another. That Sub-section enacts that Rule 20 shall, in relation to a dividend paid whether before or after the commencement of the Act, be construed as authorising the deduction of tax from the full amount paid out of profits and gains which have been charged to tax, or which, under the provisions of the Income Tax Acts, would fall to be included in computing the liability of the company to assessment to tax for any year, if the said provisions required the computation to be made by reference to the profits and gains of that year and not by reference to those of any other year or period. Sub-section (2) is, so far as material, in these terms: "Subject as hereinafter provided, a dividend paid by a body "of persons, whether before or after the commencement of this "Act, shall, to the extent to which it is paid out of such profits and "gains as are mentioned in subsection (1) of this section, be "deemed, for all the purposes of the Income Tax Acts, to represent "income of such an amount as would, after such deduction of tax "as is authorised by the provisions of the said Rule 20, be equal "to the net amount received." It will be seen that Sub-section (1) provides for a construction being put upon Rule 20 that would have justified the deduction of tax from the dividend paid in *Gimson's* case, and that Sub-section (2) would have justified the assessment of Gimson for Super-tax in the sum of £44 in respect of the payment to him of the dividend of £35. For the dividend had been paid out of profits and gains which would have fallen to be included in computing the liability of the company if the computation had to be made by reference to the profits and gains of the year of assessment. But, while bringing such a dividend as was paid in *Gimson's* case within the provisions of Rule 20, Sub-section (1) renders it, in my opinion, impossible to bring the dividend paid in this case within those provisions or within the provisions of Sub-section (2). Had Sub-section (1) provided that Rule 20 should be construed as authorising the deduction of tax from the full amount paid out of profits and gains, whether such profits and gains had or had not been charged to tax, a construction that I should, I think, have been

(Romer, L.J.)

prepared to put upon Rule 20 as it stood, the question arising upon this appeal could not have arisen. The Sub-section, however, renders such a construction impossible. It was indeed contended by the Attorney-General that the rents received by the company in the present case in excess of the annual value of the premises that were subjected to tax under Schedule A were, in truth, profits and gains charged to tax. As a general proposition, I think that that is true. Under Schedule A, tax is charged in respect of the property in all lands, tenements, hereditaments and heritages in the United Kingdom, and then are added these words: "for every twenty "shillings of the annual value thereof." Such words, however, do no more, in my opinion, than indicate the method in which the amount of the tax is to be ascertained, and do not substitute for a tax in respect of the property a tax in respect of its annual value. The annual value is merely the measure of the liability of the tax. This was, I think, the view taken by the House of Lords in the *Salisbury House* case, 15 T.C. 266. It will be sufficient to refer to what was said by Lord Warrington and Lord Tomlin. The former, when speaking of a landowner, who turned his land to profitable account, said this(1): "Such a person would, I think, ... be "assessable under Schedule A only, and his taxable income would "be measured by the conventional annual value and not by the "amounts of the rents he actually received." Lord Tomlin said(2): "When once the annual value has been ascertained and "fixed for the purposes of Schedule A it is irrelevant to consider "whether the landlord in fact receives by way of rent more or less "than, or the same as, the assessed annual value. The subject-"matter, namely, land in respect of its property quality, being "necessarily taxed under Schedule A, cannot be brought again "under any other Schedule. To do so would offend the rule against "double taxation." Indeed, if the House of Lords had not held the view that I have attributed to them, their decision in the case must have been in favour of the Crown. For, if only annual value was taxed under Schedule A, and not the income of the property, the excess of the rents over annual value was clearly taxable under Schedule D, Case VI. But I need not pursue this subject because the words "profits and gains brought into charge" as used in Rules 19 and 21, have been given a more restricted meaning than they would receive in general and apart from the context of these Rules.

In the case of the *Attorney-General* v. *Metropolitan Water Board*, 13 T.C. 294, the facts for the present purpose can be taken to have been as follows. The profits of the Water Board were assessable to Income Tax by reference to the profits of the year preceding the year of assessment. For the tax year 1921–22 the

(1) 15 T.C. at pp. 315/6. (2) *Ibid.* at p. 325.

(Romer, L.J.)

Board earned no profits. Accordingly, for the year ending 5th April, 1923, they paid no Income Tax. In that year, however, they in fact made a very large profit, and out of such profit paid the interest on their debenture stock after deducting Income Tax. The question then arose between the Commissioners of Inland Revenue and the Board whether the interest had been deducted out of profits or gains brought into charge within the meaning of Rules 19 and 21. If it had, the Board were entitled to retain the tax deducted for their own benefit. If not, they were accountable to the Crown for such tax. It was held by this Court that the interest had not been paid out of profits or gains brought into charge within the meaning of that Rule. The argument on behalf of the Water Board was as follows. The profits or gains of the Board brought into charge to tax for the year 1922–23 were the actual profits of that year, though the liability to Income Tax for that year was to be measured by the amount of the profits of the preceding year. This argument did not succeed. It was in effect held that for the purpose of the Rules the words " profits or gains brought into charge " mean the sum that is taken to measure the liability for the charge. In the case of the Water Board that sum for the year 1922–23 was nil. The interest, though in fact paid out of the actual profits of the year, had not therefore been paid out of profits or gains brought into charge. In the following year, even if the Board made no profit at all, the interest, however it was in fact provided, would be deemed to have been so paid, for the Board would have been chargeable to Income Tax by reference to the profits earned during the preceding year. Applying that decision to the present case, it would seem to follow that the dividend of £4,275 was not paid out of profits or gains brought into charge within the meaning of Rules 19 and 21. Had any part of the " surplus rents " been applied in payment of interest on debenture stock the company would, in accordance with the decision, have had to account to the Crown for the tax deducted. The words in Sub-section (1) of Section 7 of the Finance Act, 1931, are " profits and gains . . . . which have been charged " to tax," differing slightly from the words in the Rules. I do not, however, see any justification for giving the former a different construction from that placed by this Court upon the latter. The addition, in the Sub-section, of the words that follow seem, moreover, to be an indication by the Legislature that the preceding words are to bear the same construction as the words in the Rules, and are to bear the same construction as was placed upon those Rules by this Court in the *Metropolitan Water Board* case. The Crown cannot now avail itself of an argument that it defeated so successfully when advanced by the Metropolitan Water Board.

If I am right so far, it would seem to follow that Section 7 does not apply to the present case and that Rule 20 cannot be read as authorising a deduction of tax by the company from the dividend

(Romer, L.J.)

paid to the Respondent. That being so, the company must be deemed to have paid him a gross dividend of £4,275. This should have been included by the Respondent when making his return of income from all sources for the year 1929–30, and he was properly assessable in that sum for Sur-tax. It was contended on his behalf by Mr. Latter that he could not be so assessed, inasmuch as he had not been assessed to Income Tax in respect of the dividend. This, however, appears to me to be immaterial. Had he included it in his return as he should have done, I cannot see how he could have escaped paying Income Tax upon it in due course. He cannot be in any better position by having failed to make a proper return.

For these reasons, I am of opinion that this appeal should be allowed.

Mr. Hills.—With regard to the form of the Order, the effect of your Lordships' decision is that the decision of the Commissioners is restored, subject to the sum of £4,275 and not the whole sum of £5,343 15*s*. being included in the total income of the taxpayer?

Lord Hanworth, M.R.—Yes.

Mr. Hills.—We shall want an Order to that effect, either remitting it, or, if my learned friend and I cannot agree, also an Order for the repayment to the Crown of the Sur-tax which has already been repaid under Mr. Justice Finlay's Order.

Lord Hanworth, M.R.—It having been repaid, you want an Order for a fresh assessment of £4,275 being made and payment of that sum. It is not a question of repayment again. The money has gone back and it has lost its identity. It will be an assessment and, consequently, a payment.

Mr. Hills.—We have already repaid with interest a sum, of course, greatly in excess of the sum we are now shown ought to have been repaid. We should only have repaid upon the sum of about £1,000.

Lord Hanworth, M.R.—You mean the identity of it is sufficiently marked as between you?

Mr. Hills.—What I was going to suggest was that the Order should be made in accordance with your Lordships' decision, and remitted to the Commissioners, if we cannot agree the sum. That is the only point.

Lord Hanworth, M.R.—Very well, Mr. Hills; and we will say, "Payment back."

Mr. Hills.—Yes, that is it: "Payment back."

Romer, L.J.—You want further interest on that sum?

Mr. Hills.—No, my Lord, we are not allowed it. We merely want the interest we have paid repaid.

Slesser, L.J.—You are worrying about any interest that you have paid? You have paid interest which you need not have paid?

Mr. Hills.—We have repaid more tax to them than we need have repaid, with interest on it.

Both sides having appealed against the decision in the Court of Appeal, the case came before the House of Lords (Lords Tomlin, Warrington of Clyffe and Wright) on the 14th, 16th, 17th, 22nd and 23rd November, 1933, when judgment was reserved. On the 1st February, 1934, judgment was given unanimously dismissing both the appeal and the cross-appeal, with costs.

The Attorney-General (Sir Thomas Inskip, K.C.), the Solicitor-General (Sir Donald Somervell, K.C.) and Mr. R. P. Hills appeared as Counsel for the Crown and Mr. A. M. Latter, K.C., Mr. Wilfrid Greene, K.C., and Mr. J. H. Bowe for Mr. L. Neumann.

JUDGMENT

Lord Tomlin.—My Lords, this appeal and cross-appeal arise out of an assessment to Sur-tax for the year 1929–30 made upon the Appellant by the Commissioners for the Special Purposes of the Income Tax Acts.

The facts can be stated shortly. A company called the Salisbury House Estate, Limited, owned and managed a block of buildings, in the City of London, containing numerous rooms, let unfurnished, as offices, to many tenants. The company, for appropriate considerations, provided, for the tenants who required them, services in connection with the cleaning and heating of the rooms. For the four years ending 5th April, 1925, 1926, 1927 and 1928, the company were assessed under Schedule A to Income Tax on the gross value of the building as appearing on the valuation list under the Metropolis (Valuation) Act, 1869. In regard to the profits and gains derived from the services rendered to the tenants, the company admitted liability to be assessed to Income Tax under Schedule D, but the Crown claimed that, in making the assessment under Schedule D, the rents, which far exceeded the annual value as assessed under Schedule A, must be included, allowance being made for tax assessed under Schedule A. The matter came on appeal before your Lordships' House and, on 4th April, 1930, your Lordships held (see *Fry* v. *Salisbury House Estate, Limited*, [1930] A.C. 432(1)) that the rents were profits arising from the ownership of land in respect of which the assessment under Schedule A was exhaustive and that such rents, therefore, could not be included in the assessment under Schedule D as trade receipts of the company.

(1) 15 T.C. 266.

(Lord Tomlin.)

Pending that appeal to your Lordships' House, the company distributed in dividend (from which the appropriate amounts for Income Tax were deducted) sums equal to their profits in respect of services assessable under Schedule D, and also sums equal to the amounts of the assessments made under Schedule A. The company, however, set aside the sum of £18,325 (representing the amount by which their net rents exceeded the amounts of the assessments under Schedule A) to the credit of an Income Tax reserve account to meet such liability, if any, as might be established against them in the litigation then pending. On 4th April, 1930, immediately after the decision of your Lordships' House was announced, the company distributed the sum of £18,325 so set aside among their shareholders by way of dividend. The Appellant, who held 85,500 shares of £1 each in the company, received from the company a cheque for £4,275, together with a letter from the company, dated 4th April, 1930, informing him that the sum of £4,275 was in respect of an interim dividend of 5 per cent., free of tax, on the shares registered in his name and that it was equivalent to a gross amount of £5,343 15*s*. 0*d*. Later, the Appellant was informed by the company that the sum of £4,275 had been erroneously described by the company as a dividend of 5 per cent., free of tax, and that, in fact, it represented a sum distributed out of the untaxed income of the company which should not have been included in any Sur-tax return made by the Appellant. Nevertheless, the Commissioners for the Special Purposes of the Income Tax Acts, in making upon the Appellant an assessment to Sur-tax for the year 1929–30, included the sum of £5,343 15*s*. 0*d*. as being the gross amount applicable to a net dividend of £4,275.

Mr. Justice Finlay held that, in respect of the dividend in question, nothing at all ought to have been included in the assessment, and the Court of Appeal have held that the sum of £4,275, and not the sum of £5,343 15*s*. 0*d*., ought to have been so included.

The case is a difficult one, and the difficulty in part arises from the fact that the amendments from time to time made to the Income Tax Acts, directed as they frequently are to stopping an exit through the net of taxation freshly disclosed, are too often framed without sufficient regard to the basic scheme upon which the Acts originally rested.

The relative positions of a company and the shareholders of the company in relation to Income Tax under the Income Tax Acts have always been recognised as special in character. It was never, I think, doubted that, under the Act of 1842, the profits of a business carried on by a company were taxable against the company under Schedule D, and were not taxable again, after distribution, in the hands of the shareholders under Schedule D or any other Schedule. At the same time, it was permissible to the company, under Section 54 of the Act of 1842, to deduct from the dividend

(Lord Tomlin.)

the proportionate part of the tax paid to the tax collector, and the shareholders entitled to exemption from or abatement of Income Tax could, upon the footing of the deduction, obtain the necessary return of tax. I cannot but think that the position under the Act of 1842 upon its proper construction is correctly described in the following passage from the speech of Lord Phillimore in *Bradbury v. English Sewing Cotton Company, Limited*, [1923] A.C. 744, at page 769(1): "A joint stock company is under the Income Tax "Act, 1842, treated as a person and is directed to make a return "of its profits or gains according to Schedule D upon a conven- "tional figure, arrived at by taking an average of the three "preceding years, and is liable to be assessed and taxed thereupon. "If the principle of its being a distinct person, distinct from its "shareholders or the aggregate of its shareholders, had been carried "to a logical conclusion, there would have been no reason why "each shareholder should not, in his turn, have to return as part "of his profits or gains under Schedule D, the money received "by him in dividends. Their taxation would seem to be logical, "but it would be destructive of joint stock company enterprise, so "the Act of 1842 has, apparently, proceeded on the idea that for "revenue purposes a joint stock company should be treated as a "large partnership, so that the payment of income tax by a com- "pany would discharge the quasi-partners. The reason for their "discharge may be the avoidance of double taxation, or to speak "accurately, the avoidance of increased taxation. But the law is "not founded upon the introduction of some equitable principle as "modifying the statute; it is founded upon the provisions of the "statute itself; and the statute carries the analogy of a partnership "further, for it contemplates a company declaring a dividend on "the gross gains, and then on the face of the dividend warrant "making a proportionate deduction in respect of the duty, so that "the shareholder whose total income is so small that he is exempt "from income tax or pays at a lower rate, can get the income tax "which has been deducted on the dividend warrant returned to "him."

In practice, the matter did not work out quite so simply. It has to be remembered that the amount distributable in dividend in any year might, in view of the assessment of profits or gains under Schedule D being upon the basis of the average of the three preceding years, as it then was, be much more or much less than the amount of the assessment for that year, so that if this proportionate deduction was treated as meaning the rateable proportion of the tax paid by the company in respect of the year of distribution, it might much exceed or be much less than the amount which would be deducted from the dividend if the current rate of tax in respect of the gross dividend had been deducted. At any rate, a practice

(1) 8 T.C. 481 at pp. 518/9.

(Lord Tomlin.)

seems to have grown up of companies deducting from dividends tax appropriate to the amount of the dividend at the current rate of tax, quite irrespective of the amount of tax paid by the company to the Revenue, and of the shareholders claiming exemption or abatement being treated by the Revenue as having paid tax to the extent of that deduction. As the company making the deduction lay under no obligation to pay to the Revenue anything more than the tax based upon its own assessment, the result was that the tax returned to those claiming exemption or abatement could rarely, if ever, have had any exact relation to the amount of tax received by the Revenue from the recipient of returned tax.

When Super-tax was imposed in 1910, the return of total income—that is, what may be called total Income Tax income—made for the purpose of obtaining exemption or abatement became also the basis of the assessment to Super-tax and, therefore, of increased importance, and the Revenue then seem to have stood to gain, on the whole, to a greater extent by the continuance of the system which I have described. In fact, when the Act of 1918 was passed, a change was made in the language which, I think, gave effect to the practice. Rule 20 of the General Rules applicable to Schedules A, B, C, D and E took the place of Section 54 of the Act of 1842, and is in the following terms: "The profits or gains "to be charged on any body of persons shall be computed in accord- "ance with the provisions of this Act on the full amount of the "same before any dividend thereof is made in respect of any "share, right or title thereto, and the body of persons paying such "dividend shall be entitled to deduct the tax appropriate thereto." Under Section 237 of the Act of 1918, unless the context otherwise requires: "'Body of persons' means any body politic, corporate, "or collegiate, and any company, fraternity, fellowship and society "of persons, whether corporate or not corporate." By Section 33 of the Finance Act, 1924, a company is required, on every dividend warrant, or statement annexed thereto, to show "(*a*) the gross "amount of the dividend which, after deduction of the income tax "appropriate thereto, corresponds to the net amount actually "paid; and (*b*) the rate and the amount of income tax appropriate "to such gross amount; and (*c*) the net amount actually paid."

As the result of the Finance Act, 1927, Sur-tax, in and from the year 1929–30, took the place of Super-tax, and, for the year 1928–29 and every subsequent year, Income Tax became chargeable at a standard rate instead of at a single rate. Section 38 (2) of the last-mentioned Act defines total income upon which Sur-tax is based. It is in the following terms: "The expression 'total "'income' in relation to any person means the total income of "that person from all sources estimated, as the case may be, either "in accordance with the provisions of the Income Tax Acts as they "apply to income tax chargeable at the standard rate or in accord-

(Lord Tomlin.)

"ance with those provisions as they apply to Sur-tax." Section 39 of the same Act, so far as it is material, provides as follows: "(1) Such of the provisions of the Income Tax Acts as "provide that income tax may be deducted from any payment at "the rate or rates of tax in force during the period through which "the payment was accruing due, or that there may be deducted "from any dividend the tax appropriate thereto, or that a propor- "tionate deduction of the tax charged shall be allowed by any "person out of any produce or value payable to him, shall have "effect as if they provided that tax may be deducted or shall be "allowed at the standard rate for the year in which the amount "payable becomes due. . . . . (2) In estimating under the "Income Tax Acts the total income of any person, any income "which is chargeable with income tax by way of deduction at the "standard rate in force for any year shall be deemed to be income of "that year, and any deductions which are allowable on account of "sums payable under deduction of income tax at the standard rate "in force for any year out of the property or profits of that person "shall be allowed as deductions in respect of that year, notwith- "standing that the income or sums, as the case may be, accrued or "will accrue in whole or in part before or after that year."

The effect of this last-mentioned Section seems to place beyond doubt this, that, where tax may be deducted from a dividend, the amount deductible is the sum which equals the standard rate of tax for the year of payment upon the gross amount of the dividend and that, whenever the profits were earned, the sum from which the deduction is made, and the deduction itself, are to be treated as income and deduction in respect of the year in which the payment is made. Thus, the deduction permissible from the dividend clearly had no relation to the figure of tax payable by the company to the Revenue, though there was still no obligation on the company to account to the Revenue for what was deducted. The deduction, in fact, was only part of a system by which was measured (1) the extent of the shareholders' right to have exemption or abatement, and (2) the liability of the shareholder to Sur-tax.

One other subsequent provision of the law important to this case must be referred to. By Section 7 of the Finance Act, 1931, it was enacted, so far as material for the present purpose, as follows: "(1) The provisions of Rule 20 of the General Rules, which "authorise the deduction of the appropriate tax from any dividend "paid by a body of persons, shall, in relation to a dividend paid by "any body of persons, whether before or after the commencement "of this Act, be construed as authorising the deduction of tax "from the full amount paid out of profits and gains of the said "body which have been charged to tax or which, under the pro- "visions of the Income Tax Acts, would fall to be included in "computing the liability of the said body to assessment to tax for

(Lord Tomlin.)

" any year if the said provisions required the computation to be " made by reference to the profits and gains of that year and not by " reference to those of any other year or period. (2) . . . . a " dividend paid by a body of persons, whether before or after the " commencement of this Act, shall, to the extent to which it is " paid out of such profits and gains as are mentioned in sub- " section (1) of this section, be deemed, for all the purposes of the " Income Tax Acts, to represent income of such an amount as " would, after such deduction of tax as is authorised by the " provisions of the said Rule 20, be equal to the net amount " received."

Now, how do the foregoing provisions apply and with what effect to the facts of this case? On the one hand, it is said by the Appellant: (1) that, except so far as the dividend can be reduced by deduction, it is not liable to tax, because dividends as such are not directly assessable to tax; (2) that the rents in excess of the annual value, as assessed under Schedule A, are not, in the hands of the company, taxable to Income Tax at all and, therefore, that a dividend paid out of such excess rents is not, in the hands of the shareholders, taxable to Income Tax, either by deduction or by direct assessment; (3) that if the dividend is not liable to any deduction in respect of tax or taxable to Income Tax in the hands of the shareholder, it is not taxable to Sur-tax and, therefore, that no part of the sum of £4,275 ought to have been included in the assessment of the Appellant to Sur-tax. On the other hand, the Respondents say: (1) that dividends, as such, are taxable under Schedule D if not taxed by deduction and, therefore, upon any view of the case the dividend was Income Tax income; (2) that the rents out of which the dividend in question was paid were in fact charged to tax within the meaning of Section 7 (1) of the Finance Act, 1931, and the dividend must therefore be treated as a dividend from which deduction of tax was permissible; (3) that, upon this footing, inasmuch as the sum of £4,275 was the net amount received, the gross dividend must, under the provisions of Section 7 (2) of the Finance Act, 1931, be treated for Sur-tax purposes as the sum of £5,343 15*s*. 0*d*.

I may say at once that, having regard to the view which I have expressed as to the general scheme and operation of the Income Tax Acts in regard to dividends, I am unable to accept the view that dividends, as such, are taxable under Schedule D. I do not think they are. I think it is accurate to say, as Mr. Justice Rowlatt said in *Purdie* v. *Rex*, [1914] 3 K.B. 112, at page 116: " There is, " strictly speaking, no tax upon dividends at all." They are, however, under Rule 20 of the General Rules and Section 39 of the Finance Act, 1927, and apart altogether from Section 7 of the Finance Act, 1931, liable, where the dividends are made out of profits or gains charged on the company, to suffer deduction of a

(Lord Tomlin.)

sum equal to tax at the standard rate on the gross amount of the dividends and, in such cases, the gross amount of the dividend is the Income Tax income to be taken into account, whether it be for computing the amount of tax which the shareholder is entitled to have returned, or for fixing his liability to Sur-tax.

It is not disputed that, if a dividend is paid out of the profits produced by a sale of a capital asset, it is not made out of profits or gains charged on the company and, therefore, no deduction from the dividend is authorised, and the dividend itself is not liable to be taken into account in fixing the liability to Sur-tax of the shareholder. Again, where the dividend was paid out of profits or gains not chargeable on the company by reason of the application of the Rules relating to the measurement of taxable income, it was held in *Gimson* v. *Inland Revenue Commissioners*, [1930] 2 K.B. 246(1), (decided before the passing of the Finance Act, 1931) that no deduction was permissible and that the dividend ought not, therefore, to be taken into account for the purposes of Sur-tax. The Court of Appeal in the present case have held that the decision was wrong. I do not think that it was wrong. The profits or gains in that case were not profits or gains assessed by reason of the Rules at nil, but profits or gains not assessable at all. They were, therefore, not profits or gains to be charged on the company and no deduction was permissible from a dividend paid out of them. It is unnecessary to express any opinion as to the effect, if any, of Section 7 (1) of the Finance Act, 1931, upon such facts as those dealt with in that case.

In the present case, dividends have been paid out of rents arising from hereditaments assessed to tax under Schedule A, the rents exceeding the annual value fixed by the assessments. In my opinion, the rents are profits and gains to be charged on the company within the meaning of Rule 20. The fact that the measure of liability in respect of them is an artificial one does not render the rents any the less the things to be charged. In *Coman* v. *Governors of the Rotunda Hospital, Dublin*, [1921] 1 A.C. 1, at page 12(2), Lord Birkenhead, Lord Chancellor, said that Schedule A "clearly shows that the object is to tax what for the "sake of brevity may, with substantial accuracy, be called the "landlord's income." In this connection, I may observe that I do not think that the case of the *Attorney-General* v. *The Metropolitan Water Board*, [1928] 1 K.B. 833(3), affords support to a contrary view. Whether rightly or wrongly decided (as to which I express no opinion), it dealt with a different subject matter, *viz.*, the deduction of tax from interest, with different Rules, *viz.*, Rules 19 and 21, and with words differing both from those used in Rule 20 and from those used in Section 7 (1) of the Finance Act, 1931.

(1) 15 T.C. 595. (2) 7 T.C. 517 at p. 579. (3) 13 T.C. 294.

(Lord Tomlin.)

It follows, therefore, that, in my opinion, the dividend was one from which deduction was authorised and, having regard to Section 39 of the Finance Act, 1927, authorised at the standard rate for the year of payment in respect of the whole dividend. This result, in my view, follows, in the circumstances of the present case, from the true construction of Rule 20 and Section 39, irrespective of Section 7 (1) of the Finance Act, 1931. Section 7 (1) was intended to extend the authority to deduct, and seems to me to be directed to meeting the case where a dividend is paid out of a company's actual trading profits for the year, though, under Schedule D, the company's liability to tax in respect of them is assessed by reference to the profits of the previous year. It does not seem to me to have any appreciable effect in such cases as the present.

It follows, from what I have said, that the dividend in question was part of the Income Tax income of the Appellant to be taken into account in fixing his liability for Sur-tax. The question, however, remains as to the figure at which it is to be brought in. I think it would be repellent to most minds that the Appellant should be charged as a part of his income with a sum which not only has never come to him but has never existed in fact. It is plain that the Respondents' cross-appeal, which seeks to treat the sum of £4,275 as a net sum, corresponding to a gross sum of £5,343 15*s*., assumes that the amount divisible by the company was something in excess of anything it ever had to divide. It is said, however, that Section 7 (2) of the Finance Act, 1931, compels the conclusion that the sum of £5,343 15*s*. is the correct figure to be brought into computation. I do not think that the effect of the statutory provision is as contended for by the Respondents. The Sub-section, in effect, provides that it is the gross amount before deduction which is to be treated as the income for the purposes of the Acts. If a deduction from the gross sum was authorised but was not in fact made, as was the case here, there is, in my opinion, nothing in the language of the Sub-section which entitles the Inland Revenue to treat the gross sum as being greater than in fact it was. From the Income Tax point of view, it makes no difference to the Revenue whether the deduction is made or not, because the company does not have to account for what it deducts.

In my opinion, for the reasons which I have endeavoured to indicate, but which do not accord in all respects with those relied upon by the Court of Appeal, both the appeal and the cross-appeal fail and should be dismissed with costs, and I move your Lordships accordingly.

Lord Warrington of Clyffe.—My Lords, the Appellant is a shareholder in a company called Salisbury House Estate, Limited. In the tax year 1929–30, the Appellant received from the company a sum of £4,275 described as a net interim dividend of £4,275, free

(Lord Warrington of Clyffe.)

of tax. This sum represented, with the addition of tax at the standard rate for that year, a sum of £5,343 15*s*. The question is whether any sum, and, if so, what sum, in respect of such interim dividend ought to be included in the Appellant's return of income from all sources for the purposes of Sur-tax in the year 1929–30. The Appellant contends that he is under no obligation to include in his return any item in respect of such dividend or, at all events, no larger sum than the £4,275. The Respondents contend that he is bound to include the gross sum of £5,343 15*s*., and such sum was accordingly included in the assessment for the year 1929–30. On appeal to the Special Commissioners, this assessment was confirmed. On appeal to the King's Bench Division, Mr. Justice Finlay allowed the appeal and discharged the assessment, but, on appeal to the Court of Appeal, that Court by an order of the 19th January, 1933, reversed the order of Mr. Justice Finlay and confirmed the assessment, but for the sum of £4,275 only. The Appellant seeks to restore the order of Mr. Justice Finlay, and the Commissioners seek to have the assessment confirmed for the total amount of £5,343 15*s*.

The company owns a property in the City of London, the rents of which greatly exceed the " annual value " on the amount of which the company is assessed to tax under Schedule A as the owner of the property in question. The profits of the company available for dividend and the ordinary annual dividends have for many years exceeded the amounts on which, under Schedule A, Income Tax has been paid by the company. The Crown then raised the contention that the company was carrying on a trade under Schedule D and that, for the purposes of an assessment under that Schedule, all its receipts, including receipts from rents, must be included. This contention on the part of the Crown was finally disposed of by this House on the 4th April, 1930, in *Fry* v. *Salisbury House Estate, Ltd.*, [1930] A.C. 432(1). In that case, it was decided that, so far as the ownership of the house was concerned, the company had been fully assessed under Schedule A in respect of the annual value and was under no liability to be further assessed under Schedule D. The company then made to the Appellant the payment of £4,275 above referred to. The payment was made out of a sum of £18,325 put aside out of its profits as an Income Tax reserve pending the decision above-mentioned. This last-mentioned sum had been taken from a surplus of accumulated rents which remained in the hands of the company after profits had been distributed to the amount of any assessment made upon the company. The letter accompanying the cheque for £4,275 stated that it was an interim dividend for the year ending the 25th December, 1930, at 5 per cent., free of tax, and was equivalent to a gross amount of £5,343 15*s*. less Income Tax at 4*s*. in the £, £1,068 15*s*. = £4,275, and it contained the usual certificate that the Income Tax

(1) 15 T.C. 266.

(Lord Warrington of Clyffe.)

deducted had been, or would be, duly paid to the proper officer for the receipt of taxes. Later, the company adopted the position that the fund, out of which the dividend was paid, was untaxed income in the hands of the company and not taxable in the hands of the Appellant, and should not be included in any return of total income. They also withdrew the certificate relating to the payment of tax.

The present appeal raises two questions: first, whether in the hands of the Appellant as a shareholder, the dividend in question is subject to tax and, secondly, if it is, should the Appellant include in his return of total income from all sources the gross sum of £5,343 15*s*. or the £4,275. In the Court of Appeal, the first of these questions was decided in favour of the Crown and the second in favour of the Appellant.

As to the first, in my opinion, the judgment of the Court of Appeal was correct. I have had the advantage of reading and considering the opinion of my noble and learned friend on the Woolsack and I am clearly of the opinion that the views he has expressed are correct. In particular, I agree that dividends, as such, are not taxable under Schedule D, but that, where they are made out of profits and gains charged on the company they are liable to suffer deduction under the provisions of Rule 20 of the General Rules and Section 39 of the Finance Act, 1927, and that the gross amount is Income Tax income to be taken into account, whether it be for determining a claim for return of tax or for fixing the liability to Sur-tax.

In the present case, the dividend has been paid, not out of capital, but out of rents arising from property assessed to tax under Schedule A, and these rents are, in my opinion, profits and gains to be charged on the company under Rule 20, notwithstanding that the measure of liability is not the amount of the rents themselves but the annual value of the hereditaments from which they arise. If this is so, then the dividend was one from which deduction of tax was authorised and would be Income Tax income to be included in the return of income from all sources for the purposes of Sur-tax.

This brings me to the second question, namely, at what figure is the dividend to be brought in? Here, again, I agree with my noble and learned friend. In such a case as this, namely, where no deduction is in fact made, there is no distinction between a gross sum and a net sum. The actual sum paid, and not some wholly fictitious sum, is, therefore, that which should be included in the return of income.

I concur in the order proposed by my noble and learned friend.

Lord Wright.—My Lords, I also agree.

By Paragraph XVII of the Fifth Schedule to the Income Tax Act, 1918, a person claiming any allowance or deduction is required, *inter alia*, to state "the amount of rents, interests, annuities, or

(Lord Wright.)

" other annual payments in respect of which the claimant is liable " to allow the tax " as an item in the declaration and statement of his total income. After Super-tax was imposed in 1910 (the place of which is now taken by Sur-tax), a taxpayer is similarly required to declare his total income including the same item. Thus, the statement of total income which was originally required to enable the taxpayer to claim a benefit is now required to enable the Revenue authorities, in proper cases, to compute the Sur-tax, and, no doubt, this latter purpose is now more important than the original object. Under the head of " annual payments " fall dividends from companies in which the taxpayer is a shareholder.

There are now certain Rules with regard to such dividends which, so far as relevant to this appeal, are to be found in the Income Tax Act, 1918, in Rule 20 of the General Rules applicable to all Schedules, and in certain subsequent amending Acts. Rule 20 is in these terms : " The profits or gains to be charged on any body " of persons shall be computed in accordance with the provisions of " this Act on the full amount of the same before any dividend " thereof is made in respect of any share, right or title thereto, " and the body of persons paying such dividend shall be entitled " to deduct the tax appropriate thereto." As I interpret this Rule, the profits or gains in respect of which the right of deduction is so given are profits or gains which have been charged to tax. " Body " of persons ", by the definition in Section 237 of the Act, includes companies; partnerships are separately dealt with. By Section 33 of the Finance Act, 1924, every warrant or cheque of a company in payment of any dividend must have annexed thereto, or be accompanied by, a statement in writing showing (*a*) the gross amount which, after deduction of the Income Tax appropriate thereto, corresponds to the net amount actually paid; (*b*) the rate and the amount of Income Tax appropriate to such gross amount; and (*c*) the net amount actually paid. By Section 39 of the Finance Act, 1927, it is enacted, *inter alia*, that the provisions for the deduction from any dividend of the tax appropriate thereto shall have effect as if they provided that the tax may be deducted at the standard rate for the year in which the amount payable became due. Section 7 of the Finance Act, 1931, which is retrospective, by Sub-section (1) provides that Rule 20 shall be considered as authorising the deduction of tax from the full amount paid out of profits and gains which have been charged to tax, or which, under the provisions of the Income Tax Acts, would fall to be included in computing the liability of the said body to assessment to tax for any year, if the said provisions required the computation to be made by reference to the profits and gains of that year and not by reference to those of any other year or period. By Sub-section (2) any dividend paid by a body of persons shall, to the extent that it is paid out of such profits and gains as are mentioned in Sub-section (1),

(Lord Wright.)

be deemed, for all the purposes of the Income Tax Acts, to represent income of such an amount as would, after such deduction of tax as is authorised by the provisions of the said Rule 20, be equal to the net amount received.

Rule 20 is, in effect, based on Section 54 of the Income Tax Act, 1842, with the substitution of the words " the tax appropriate " thereto " for the words " the tax proportionate thereto ". The scheme of these provisions, as I understand them, is to impose the tax on all the profits of the company at the source; if and so far as these profits have been so taxed, they are not liable to any further tax, other than Sur-tax, in the hands of the shareholder receiving the dividend. The shareholder and the company are, no doubt, separate entities; the company is not an agent for the shareholder to pay tax on the dividend, nor is the company the collector for the Revenue to deduct the tax from the dividend. The company is the taxpayer. The shareholder has no right to any share in the profits till a dividend is declared; the company may use the profits in any way it pleases *vis-à-vis* any shareholder; it may put them to reserve or capitalise them or use them for extensions or improvements; the profits declared and paid as dividends in one year may have been made in previous years, when the standard rate of tax was different. It is only very rarely, and in exceptional cases, that dividends are paid out of any particular source of profit; usually they are paid out of the general revenue fund of the company. What is essential to the requirements of the Inland Revenue is that all the profits of the company should be taxed and, if that is done, the Revenue is not concerned with what is done with these profits. The company is not bound, but only authorised, to deduct tax in paying dividends; whether it deducts or not is left to its discretion, because the profits, once having been taxed in the company's hands, do not bear further tax—apart from Sur-tax—in the shareholders' hands. There is, in fact, only one profit, no new profit being created from the fact that the shareholder gets his share; the tax is a tax on the profits and not on the dividend. But, if tax is deducted from the dividend, the Acts have provided that it is to be at the standard rate of tax of the year of dividend, in order to avoid obvious difficulties which might arise because profits divided in one year may have been earned in other years. The provisions of Section 7 of the Finance Act, 1931, will be considered by me more particularly in connection with the cross-appeal.

On a careful review of these provisions, I reach the conclusion that a shareholder is not separately taxable—I disregard Sur-tax—on a dividend, as a profit individual to himself, under Schedule D, Case VI, as the Court of Appeal held, or at all. Apart from what I conceive to be the clear effect of the Acts in this regard, I think the position has been so stated by this House more than once, at least as a matter of observation. Thus, in *Inland Revenue Com-*

(Lord Wright.)

missioners v. *Blott*, [1921] 2 A.C. 171, at page 201(1), Viscount Cave thus explained the system :—" Plainly, a company paying " income tax on its profits does not pay it as agent for its share- " holders. It pays as a taxpayer, and if no dividend is declared " the shareholders have no direct concern in the payment. If a " dividend is declared, the company is entitled to deduct from such " dividend a proportionate part of the amount of tax previously " paid by the company; and in that case the payment by the " company operates in relief of the shareholder." In *Bradbury* v. *English Sewing Cotton Company*, [1923] A.C. 744, at page 766(2), Lord Wrenbury thus expressed the same idea in concise form : " The corporator bore his share of the tax by the deduction " of the appropriate share of the collective tax paid by the corpora- " tion from his dividend." Lord Phillimore expresses the same view at page 771(3) : " the shareholder "—in the ordinary case of a taxed company—" is taken to have paid the tax upon his " dividends through the company and is not . . . . taxed upon " them."

These cases, and other similar statements of the principle which I need not quote, were, no doubt, made with reference to Section 54 of the Income Tax Act, 1842, but I do not think that the substitution in the later Act of the word "' appropriate " for the word " proportionate " in the earlier Act, affects the principle. In 1842, the modern development of limited companies was not in contemplation ; " proportionate " was an apt word for the simple cases of corporators where each year the corporators shared, in definite proportions, the available net income. " Appropriate " tax, which is more precisely defined by the Finance Act of 1927 as being at the standard rate of the year of payment, is clearly a more apt term in connection with the dividends of a company. But the same view has been expressed in regard to Rule 20 of the Act of 1918, for instance, by Lord Sterndale and Lord Warrington in *Sheldrick* v. *South African Breweries Limited*, [1923] 1 K.B. 173.

The Court of Appeal, in deciding against the Appellant, on the ground that the dividend he received was separately taxable in his hands at the standard rate (because charged with Income Tax under Schedule D), found some support for their decision in *Hamilton* v. *Inland Revenue Commissioners*, [1931] 2 K.B. 495(4) : in that case, the shareholder claimed that he was only liable to be taxed to the extent of a proportionate part—that is, in the proportion that his shareholding bore to the total issued capital of the company—and not on the basis of the tax appropriate to his actual dividend. That contention was rightly rejected both by Mr. Justice Rowlatt and by the Court of Appeal. But the decision did not involve, or require, as I think, any conclusion that dividends were

(1) 8 T.C. 101 at p. 136. (2) 8 T.C. 481 at p. 516.
(3) *Ibid.* at p. 519. (4) 16 T.C. 213.

(Lord Wright.)

separately taxable in the shareholder's hands under Schedule D, nor did Mr. Justice Rowlatt so think, though certain dicta in the Court of Appeal may seem to point that way. I cannot, with respect, go with the Court of Appeal in dismissing the Appellant's appeal on the ground that the dividend, not being a capital distribution, was chargeable with Income Tax under Schedule D. For the reason I have stated, I think that is not in accordance with the provisions of the Acts.

But there still remains to be considered the question whether the company was authorised to deduct tax from the dividend, either under Rule 20 or, now, under Section 7 of the Act of 1931. The answer to that question depends on determining whether the dividend paid to the Appellant was paid out of profits and gains charged to tax. Thus, where a dividend was paid out of profits which were not chargeable to Income Tax, it was held by Mr. Justice Rowlatt in *Gimson* v. *Inland Revenue Commissioners*, [1930] 2 K.B. 246(1), that Super-tax was not payable. Part of the dividend was in respect of profits of a capital nature, part out of profits which were not assessable by reason of the rules of admeasurement. I think the decision was correct as the law then stood, though, as regards the latter class of profits, the case may now need to be considered afresh in the light of Section 7 of the Finance Act, 1931, that is, on the question whether such profits were or were not chargeable. The present case is peculiar in that the moneys out of which the dividend came are taken to be identified as paid out of the sums put aside from the profits of the company, the Salisbury House Estate, Limited, as a reserve pending the decision of their dispute with the Inland Revenue; the dispute was eventually settled by the decision of this House in *Fry* v. *Salisbury House Estate, Limited*, [1930] A.C. 432(2), which went in favour of the company. The company's main business, being that of letting premises, which were its property, for use as flats, was assessed under Schedule A, that is, the property tax. The rents or profits amounted to a sum largely in excess of the assessment, but it was held that the excess beyond the amount of the Schedule A assessment could not be the subject of a separate and further assessment under Schedule D. The sum put to reserve by the company was therefore free, and out of that sum the dividend in question was thereupon paid. It was contended, on behalf of the Appellant, that this sum, segregated in this way, was not taxable at all and, hence, neither Rule 20 nor Section 7 applied. Only so much, it was contended, was charged to tax as corresponded to actual figures of assessment, so that the Schedule A assessment exhausted the taxable capacity of the company's income from the flats and, hence, the surplus fund, out of which the dividend was paid, was not charged to tax. But the reasoning of this House, in the case just

(1) 15 T.C. 595. (2) 15 T.C. 266

(Lord Wright.)

cited, seems to me to show that the income or profits from the rents, whatever their amount, were exhaustively dealt with in their taxable capacity by the Schedule A assessment, so that no part of that income could be described as untaxed. The actual attempt to split up the fund into the amount taxed under Schedule A and the balance remaining beyond that amount was, in my opinion, a purely artificial segregation; the fund in truth was, I think, a single fund of profits which was assessed and charged as a whole and once for all under Schedule A. I think this is clear from the reasoning of the noble and learned Lords. Thus, if I may quote a few brief excerpts, Lord Dunedin says, at page 440(1): "The rents, having "been assessed under Schedule A, are, so to speak, exhausted as a "source of income." Lord Atkin says, at page 458(2), that even if the company "trade in letting houses, their income, so far as it "is derived from that part of their trading, must be taxed under "Schedule A and not Schedule D." Lord Macmillan says, at page 467(3): "Property in land . . . . is dealt with, and can only "be dealt with under Schedule A, and the rules of that "Schedule prescribe how the income from landed property "is to be ascertained and measured. If the measure is "an imperfect one and when applied does not ascertain "the actual income derived from the property so much "the worse for the revenue." In my judgment, the dividend in question was paid out of the income, or profits and gains, from the company's property, which were taxed as a whole, and comprehensively, under Schedule A, irrespective of any subsequent dissection, and was accordingly paid out of profits and gains charged to tax.

The Court of Appeal, in deciding that the segregated portion of the rents, out of which the dividend in question was paid, had not been charged to tax, placed some reliance on the case of the *Attorney-General* v. *The Metropolitan Water Board*, [1928] 1 K.B. 833(4), where large sums of interest were paid out of the actual profits of the year, but, owing to the Rules applicable, the profits were not assessable in that year because, in the preceding year, there had been no profits and hence the assessment in the year in which the payments were made was nil. That case was regarded by the Court of Appeal as involving a principle applicable to the facts of the present case—that the profits and gains charged to tax were limited to the sum taken to measure the liability for the charge. That case did not relate to dividends payable to shareholders, but to annual payments to creditors of the company: to such a case, not Rule 20, but Rules 19 and 21, apply. I desire to express no view in regard to that case; I do not regard it as relevant here. Furthermore, in the present case, there is no ques-

(1) 15 T.C. at p. 308. (2) *Ibid.* at p. 321.
(3) *Ibid.* at p. 328. (4) 13 T.C. 294.

(Lord Wright.)

tion of a nil assessment: for the reasons I have attempted to summarise above, I think that there has been a full assessment of, and charge on, the profits and gains out of which the dividend was paid. On that view of the position, the dividend here in question was a dividend from which the deduction of tax was authorised, so that whether tax were deducted or not, the dividend must be brought into account by the Appellant in the return of his total income and, accordingly, becomes liable to Sur-tax. On this ground, the appeal should, in my opinion, fail.

I now turn to the cross-appeal of the Crown. The cheque, or warrant, originally sent to the Appellant was for £4,275, with a statement that it represented a gross amount of £5,343 15*s*. 0*d*.; this was later corrected by a statement that £4,275 represented a distribution of untaxed income and was an "actual" sum. It was, in fact, the Appellant's proportionate part of the total fund held in reserve as representing the amount of rents in excess of the Schedule A assessment. The Court of Appeal having held, as I have already stated, that the dividend of £4,275 was liable to Income Tax under Schedule D, and also held that the sum out of which it was paid was not charged to tax, went on to dismiss the cross-appeal on the ground that there could not be a charge of Sur-tax unless on sums liable to be charged to Income Tax and, hence, that £4,275 was all that the Revenue could bring into charge for Sur-tax. I have already explained why I cannot agree with this view and must go on to consider the question on the basis that £4,275 was paid out of a fund charged to tax. The claim of the Revenue in the cross-appeal is, no doubt, anomalous, because, if what was being distributed was, in fact, the whole balance of the rents in excess of the Schedule A assessment, the contention that the dividend is to be taken at the gross amount of £5,343 15*s*. 0*d*. means that so much more is taken to come out of the fund than was ever in the fund. It is, however, contended on behalf of the Respondents that, under Section 7 (2) of the Act of 1931, the dividend of £4,275, being paid out of profits such as are mentioned in Sub-section (1), must be deemed to represent the gross amount which results from adding the appropriate tax to £4,275, *viz*., £5,343 15*s*. 0*d*. This result, it is argued, follows because the Sub-section has fixed a purely arbitrary and conventional standard. The company paying the dividend is not bound, but only authorised, to deduct tax—that is a matter between it and the shareholder—the Revenue is not concerned so long as it gets the tax from the company; but, the Revenue being further concerned, in regard to Sur-tax, with the position of the shareholder, the Act has provided that the shareholder, though he is not assessed to Income Tax on the dividend, is "deemed" to have paid it, because whatever actual sum he receives by way of dividend is "deemed" to have been reduced to its actual figure by deduction of the appropriate

(Lord Wright.)

tax and, hence, it was contended, the returns of total income are to be taken at the higher or gross figure. This would, no doubt, redound to the benefit of the taxpayer in cases where he is entitled to claim an allowance or deduction, but, in such a case as the present, where Sur-tax is involved, it would be very beneficial to the Revenue.

Such was the argument. It is an argument which would involve, in this case, a purely fictitious figure; the Sur-tax would be levied on a figure of £5,343 15*s*. 0*d*., whereas the gross, or total, sum which the Appellant could receive as his share out of the whole fund of the profits which were being divided could be not more than £4,275. Yet, however anomalous the claim, it must receive effect if the actual language of the Section so requires. But I think the claim of the Respondents fails because it ignores the word " net " in Sub-section (2). That word involves the idea of deduction, which in this case must be a deduction of tax. Thus in Section 33 of the Finance Act, 1924, " the net amount " actually paid " is the amount arrived at by the deduction from the gross amount of the appropriate tax. In *Hamilton's* case (*supra*)(1), the very careful statement by the Commissioners speaks of " the almost universal practice to deduct from the " gross amount of the dividend the tax appropriate to that " amount, or, if the dividend is declared to be ' free of tax ', " to treat it, for the purposes of computing total income, as " equivalent to the gross amount which, after deduction of the " appropriate tax, corresponds to the net amount actually paid, " without any reference to the amount of the company's " ' statutory ' income." But the present case has proceeded on the basis of a specially segregated fund, the whole of which was distributed without any deduction for tax, nor was the dividend, in fact, nor could it be, described as " tax free ", a phrase which is used to indicate that the dividend is net and under prior deduction of tax. Such a case as the present is unusual, because a fund has been segregated and divided *in toto*; hence, if the company had deducted tax, it would have been from a gross amount, not of £5,343 15*s*. 0*d*., but of £4,275, and equally, if the dividend had been " tax free ", it would have been a dividend of the net amount after the appropriate deduction of tax had been made from the sum of £4,275. Furthermore, in the company's hands, no greater sum in respect of this fund was chargeable to Income Tax than £18,325, of which £4,275 was the Appellant's *aliquot* proportion. What was distributed—being £4,275—was, in my judgment, the gross amount; the company, though authorised to deduct tax from it, was not bound to deduct it and did not in fact do so. I cannot see any justification for describing the sum distributed as a " net

(1) 16 T.C. at p. 219.

(Lord Wright.)

" amount " and, hence, I conclude that Section 7 (2) does not apply. I cannot treat the word " net " as mere surplusage or as simply meaning the actual amount, whether gross or net.

For these reasons, I think that both the appeal and cross-appeal should be dismissed.

Questions put:

That the Order appealed from be reversed.

The Not Contents have it.

That the Order appealed from be affirmed and this appeal be dismissed with costs.

The Contents have it.

That the cross-appeal be dismissed with costs.

The Contents have it.

[Solicitors :—Holmes, Son and Pott; Solicitor of Inland Revenue.]

No. 750.—HIGH COURT OF JUSTICE (KING'S BENCH DIVISION).—17TH, 18TH, 21ST AND 25TH JANUARY, 1929.

COURT OF APPEAL.—2ND, 3RD, 6TH AND 7TH MAY AND 6TH JUNE, 1929.

HOUSE OF LORDS.—20TH FEBRUARY, 13TH MARCH AND 4TH APRIL, 1930.

THE COMMISSIONERS OF INLAND REVENUE v. DALGETY AND COMPANY, LIMITED.[1]

Dominion Income Tax relief—Finance Act, 1916 (6 & 7 *Geo.* V, *c.* 24), *Section* 43; *Income Tax Act*, 1918 (8 & 9 *Geo.* V, *c.* 40), *Section* 55; *and Finance Act*, 1920 (10 & 11 *Geo.* V, *c.* 18), *Section* 27.

A company incorporated and controlled in England and trading in Australia and New Zealand paid both United Kingdom Income Tax and Dominion Income Tax in respect of its profits derived from trading operations in those Dominions. In addition to the trading profits the Company had other income, which was subject to United Kingdom Income Tax only. The Company paid under deduction of United Kingdom Income Tax at the full rate substantial amounts of debenture interest which it was agreed should be regarded, for the purposes of a claim to Dominion Income Tax relief, as having been paid out of the Company's income that was subject to United Kingdom Income Tax only, so far as such income was available for that purpose, and as to the balance as having been paid out of the trading profits that were subject to both United Kingdom Income Tax and Dominion Income Tax.

The Company claimed that it was entitled to relief in respect of the total amount of trading profits on which it had paid both United Kingdom Income Tax and Dominion Income Tax, its right to relief not being affected by the fact that it was entitled to deduct and had deducted United Kingdom Income Tax at the full rate from the debenture interest paid out of those profits.

Held, *that the Company was entitled to the relief claimed.*

CASE.

Stated under the Finance Act, 1921, Section 28, and the Income Tax Act, 1918, Section 149, by the Commissioners for the Special Purposes of the Income Tax Acts for the opinion of the King's Bench Division of the High Court of Justice.

1. At a meeting of the Commissioners for the Special Purposes of the Income Tax Acts held on 7th February, 1927, for the

(1) Reported (K.B.D. & C.A.) [1930] 1 K.B. 1 and (H.L.) 46 T.L.R. 349.

purpose of hearing appeals, Dalgety and Company, Limited, hereinafter called the Company, claimed relief in respect of Colonial or Dominion Income Tax under Section 43 of the Finance Act, 1916, and Section 55 of the Income Tax Act, 1918, for the years ending respectively 5th April, 1917, 5th April, 1918, 5th April, 1919, 5th April, 1920, and under Section 27 of the Finance Act, 1920, for the years ending 5th April, 1921, 5th April, 1922, 5th April, 1923, and 5th April, 1924.

2. The Company is a company incorporated in England under the Companies Acts with an authorised capital which during the years in question consisted of 200,000 Ordinary Shares of £20 each, on all of which £5 per share has been paid up, and 100,000 Preference Shares of £10 each, of which 50,000 have been issued and fully paid up. The Company has also issued debentures and Debenture Stocks (both of which are hereinafter included in the expression "debentures") which during the years in question amounted to approximately £2,500,000. Under these debentures the principal and interest were secured on the whole undertaking and assets of the Company.

3. The business of the Company is that of general merchants, shipping and insurance agents, and bankers. Apart from dividends which are taxed by deduction and income from property which is charged to Income Tax under Schedule A, practically the whole of its income arises from trading profits earned by trading operations in Australia and New Zealand, but as the control of the Company is exercised in England, such trading profits are all assessed to British Income Tax under Case 1 of Schedule D. Dominion Income Tax has also been paid on such trading profits arising in Australia and New Zealand.

4. For each of the years under review a claim for relief in respect of Colonial or Dominion Income Tax has been made by the Company, and has been admitted in part by the Commissioners of Inland Revenue. No question now remains in dispute in regard to the rate at which relief should be granted for any year, the sole point at issue being whether the amount on which the relief due to the Company is to be calculated is the whole amount of the profits earned by it in Australia and New Zealand or only the balance of such profits remaining after deducting therefrom the excess of the interest paid by it on its debentures over the amount of income arising in the United Kingdom. It is agreed that the debenture interest should be regarded as paid out of income arising in the United Kingdom so far as there was such income available for the purpose and consequently to that extent would not affect the amount of relief to which the Company might be entitled. The balance of the debenture interest was paid out of the said trading profits.

5. The following figures for two typical years, of which the first is governed by Section 43 of the Finance Act, 1916, and the second by Section 27 of the Finance Act, 1920, illustrate (i) the method which the Company claims and (ii) the method which the Crown claims should be followed in calculating the amount of relief due :

Relief 1918–19.

(*a*) Total Profits		£468,089
(*b*) Taxed Dividends and Schedule A		48,820
(*c*) Profits (excluding line (*b*)), i.e., trading profits taxed under Case 1, Schedule D, and also to Dominion Income Tax		419,269
(*d*) Debenture Interest	£104,065	
(*e*) *Less* (*b*) above	48,820	
		55,245
(*f*) Net Profits		£364,024
(i) *Claimed by the Company.* Relief due on line (*c*) i.e., on whole of profits made in the Dominions (not deducting any debenture interest) amounting at agreed rates to		£49,713
(ii) *Allowed by the Revenue.* Relief due on line (*c*) as above less balance of debenture interest amounting to £55,245 as above (i.e., relief on line (*f*)) amounting at agreed rates to		£43,820
Difference between the two methods ...		£5,893

Relief 1923–24.

(*a*) Total Profits		£578,051
(*b*) Taxed Dividends and Schedule A.		79,506
(*c*) Profits (excluding line (*b*)), i.e., trading profits taxed under Case 1, Schedule D, and also to Dominion Income Tax		£498,545
(*d*) Debenture Interest	£114,228	
(*e*) Less (*b*) above	79,506	
		34,722
(*f*) Net Profits		£463,823
(i) *Claimed by the Company.* Relief due on line (*c*), i.e., on whole of profits made in the Dominions (not deducting any debenture interest) amounting at agreed rates to		£50,838
(ii) *Allowed by the Revenue.* Relief due on line (*c*) as above less balance of debenture interest amounting to £34,722 as above (i.e., relief on line (*f*)) amounting at agreed rates to		£47,567
Difference between the two methods ...		£3,271

6. In computing the profits for assessment under Case I, Schedule D, no deduction was allowed in respect of debenture interest. In paying such debenture interest the Company deducted the full rate of United Kingdom Income Tax.

7. It was contended on behalf of the Company:

(*a*) That the Company had paid United Kingdom Income Tax on the whole of its income which included the part thereof earned in Australia and New Zealand.

(*b*) That the Company had also paid Colonial or Dominion Income Tax on the part of its income earned in Australia and New Zealand.

(*c*) That the Company was therefore entitled to relief from United Kingdom Income Tax on all that part of the income.

(*d*) That the Company's right to relief was not affected by the fact that it was entitled to deduct and had deducted United Kingdom Income Tax on payment of interest to its debenture holders.

8. It was contended on behalf of the Crown, inter alia

(*a*) That the Company was not entitled to relief in respect of any income the tax on which it was entitled to deduct out of any payment made by it to any other person.

(*b*) That so far as the profits were applied in payment of debenture interest they were not income of the Company within the relief provisions in question.

(*c*) That as the Company had not ultimately borne United Kingdom Income Tax on the amount paid by way of debenture interest it had not paid such tax within the meaning of the Sections providing for the allowance of relief.

(*d*) That the method of computing the relief contended for by the Crown as set out in paragraph 5 hereof was correct.

9. We, the Commissioners who heard the claim, gave our decision upon the point now in dispute in the following terms:

"The first question with which we have to deal is whether "the Company is entitled to Dominion Income Tax Relief upon "the whole amount of the profits earned by it in Australia and "New Zealand, or only on the balance remaining after deducting "from those profits the excess of debenture interest paid by it "over the amount of income arising in the United Kingdom.

"The Company has, in the first instance, paid United Kingdom "Income Tax on the whole of its profits, wherever arising, "without any deduction in respect of debenture interest. It has "also paid Dominion Income Tax on the profits arising in

" Australia and New Zealand without deduction in respect of " debenture interest. It has deducted United Kingdom Income " Tax from the interest paid to its debenture holders, but has not " deducted, and was not entitled to deduct, Dominion Income Tax " from such interest.

" It is urged on behalf of the Company that all its profits " from Australia and New Zealand, including those which have " been applied in the payment of debenture interest, have borne " both United Kingdom and Dominion Income Tax, that in the " literal and natural sense the Company has paid both taxes and " nobody else has in any sense paid both taxes, and that the " Company is a person, and the only person, who can claim the " relief granted by the Sections from this double burden. It is " submitted that this view is supported by the decision of the " House of Lords in the case of the *Scottish Union and National* " *Insurance Company* v. *New Zealand and Australian Land* " *Company, Limited* [1921] 1. A.C. 172.

" On behalf of the Crown it is contended that the Sections " require a claimant for relief to show that he has paid double " tax on some part of his net total income, and that he has " ultimately borne the United Kingdom tax from which he claims " relief. It is argued that Section 17 of the Income Tax Act, 1918, " precludes the allowance of relief in respect of any income the tax " on which the claimant is entitled to charge against any other " person, or to deduct out of any payment which he is liable to " make to any other person, and that the contention of the Crown " is supported both by the definition of ' appropriate rate ' in " Section 27 of the Finance Act, 1920, and by the judgments in " the *Scottish Union* case, which depend on a consideration of the " question of the incidence of the burden of the tax.

" Section 17 of the Income Tax Act, 1918, appears to raise a " formidable objection to the Company's claim, and the argument " based upon it calls for careful consideration. Section 17 " reproduces in substance a limitation contained in Section 163 of " the Income Tax Act, 1842, and both in substance and in form " (except for the substitution of ' claimant ' for ' individual ') a " limitation contained in the provisions of the Finance Acts of 1907 " and 1916 as to relief on earned and unearned income respectively. " Section 163 of the Act of 1842 related to the conditions on which " persons with small incomes could claim exemption from Income " Tax, and it was subsequently applied to claims for abatement " and other reliefs dependent on total income from all sources. " For the years 1916–17 to 1918–19, the Crown cannot rely upon " the form of Section 17, but for this line of argument must rest " upon Section 163 of the Act of 1842. Section 17 of the Act of " 1918 does not really alter the position as regards the later years. " It is one of a series of Sections relating to exemption, abate- " ment and relief dependent on total income. The ' claimant '

" referred to in Section 17, as in Sections 10 to 15, is an individual " described in Section 9 who claims and proves that his total " income from all sources does not exceed a specified amount. The " accident that in the Act as finally printed Section 17 appears " as a separate Section cannot have the effect that the Consolidation " Act has extended the scope of this provision to classes of claimants " to whom it did not previously apply. (Historically the Report " of the Joint Select Committee of both Houses of Parliament on " the Bill shows that some slight hesitation was felt as to the " propriety of passing these Sections in the form eventually " adopted, on the ground that they might conceivably effect an " alteration of the law in the sense, not of extending, but of " restricting, the scope of the provision reproduced, as excluding, " by the substitution of the word ' individual ' for the word " ' person ', a possible argument, which the Committee considered " to be invalid, that Section 163 might apply to corporate bodies). " The argument based on this provision has therefore no weight " unless a claim under Section 43 of the Finance Act, 1916, " Section 55 of the Income Tax Act, 1918, or Section 27 of the " Finance Act, 1920, implies a proof of total income from all sources " in accordance with Sections 163 and 164 of the Act of 1842, " Sections 9 and 27 of the Act of 1918, and Section 17 of the " Act of 1920. Against this suggestion may be set the generally " accepted view that Sections 163 and 164 of the Act of 1842 did " not apply to companies, and the reappearance of the word " ' person ' in Section 27 of the Act of 1920 after ' individual ' " had been adopted in the provisions as to proofs of total income " from all sources. If these last named provisions are to be " applied to claims under the Dominion Income Tax Relief Sections " made by companies, it can only be an implied analogy.

" The obscure provisions of Section 27 of the Act of 1920 as " to the determination of the rate of United Kingdom Income Tax " have no application for years prior to 1920–21. From that time " onwards they raise several difficult questions as to the proper " method of determining the rate appropriate to an individual. " For example, what is the relation of the definition of ' rate of " ' United Kingdom Income Tax ' in subsection 8 (*d*) to the " definition of ' appropriate rate ' in subsection (1)? Has ' payable ' " in the one the same meaning as ' has borne or is liable to bear ' " in the other? Has ' Taxable income ' in Section 27 (8) (*d*) the " same meaning as in Section 17? Does ' Taxable income ' in " either case include or exclude income the tax on which the " claimant is entitled to charge against any other person or to " deduct out of any payment which he is liable to make to any " other person? Assuming, however, that the practice of deter- " mining the rate appropriate to an individual by dividing the tax " ultimately borne by him by his net total income after deducting " charges and the allowances granted by Sections 17 to 22 of the

" Act of 1920 correctly interprets the intention which the Act has " failed to elucidate, and that the substantial object of these " complicated provisions is to provide that in determining the " appropriate rate account should be taken of the half-rate relief " which an individual can obtain on the first £225 of his taxable " income, we are not much helped towards a solution of our " problem. In the case of a company, any rational method of " determining the appropriate rate will produce the result that the " appropriate rate is the standard rate, and, after all, the amount " of income used as a divisor in determining the rate has no " necessary relation to the income on which relief is to be given. " The determination of rates is merely a preliminary proceeding, " the rates when determined have to be applied to quite a different " amount of income. In such a Section as this, even if the " meaning of taxable income were clear, there is no presumption " that the word ' income ' has the same meaning throughout. If " it were otherwise, it might be worth notice that in determining " the rate of the Federal tax on the Australian income the debenture " interest is, perhaps necessarily, included in the amount of income " used as a divisor.

" The judgments in the *Scottish Union* case appear, so far as " they go, to be in favour of the Company. The burden of tax of " which the incidence was considered was the burden of the " Colonial tax. The House of Lords was fully aware that the " preference shareholders ultimately bore the burden of the United " Kingdom Tax, but this did not suggest any doubt as to the right " of the Company to claim repayment of a portion of that tax. " Again in *Sheldrick* v. *South African Breweries, Ltd.*(1) the right " of the Company to relief in respect of all its South African " profits was treated as unquestionable, though Section 27 (5) " obliged it to pass on the relief so obtained to the preference " shareholders. Thus in the one case the Company was held to be " entitled to claim and retain the relief for the benefit of the " ordinary shareholders, though they did not ultimately bear the " United Kingdom tax on the profits distributed to the preference " shareholders, while in the other case, under the Act of 1920, the " preference shareholders obtained the relief though they had not " suffered any Dominion Income Tax.

" These decisions appear to be incompatible with the view that " it is an essential condition of a title to relief that the claimant " should ultimately bear both taxes, and if, apart from sub-" section (5) of Section 27 of the Act of 1920, a company could " claim relief for the benefit of ordinary shareholders in respect of " profits the United Kingdom tax on which was ultimately borne " by preference shareholders the fact that United Kingdom tax " was ultimately borne by debenture holders would not in itself

(1) [1923] 1 K.B. 173.

" seem to create an obstacle to relief in respect of profits applied in " payment of interest to them. On the other hand the decisions " are not conclusive against the argument that the income on which " relief can be given must be part of the net total income of the " claimant. Preference shareholders are members of the company " and there is no doubt that profits distributed to them form part " of the income of the company. Debenture holders are not " members of the company, and it is a debatable question whether " profits applied in payment of interest to them are or are not part " of the income of the company earning them.

" We come back, then, with little or nothing to guide us, to " the question whether in applying the Sections relating to Colonial " or Dominion Income Tax relief, profits used by a company in " payment of interest to its debenture holders are to be regarded " as forming part of the company's income or must, for the purpose " of ascertaining the amount of the company's income, be deducted " from the total profits earned.

" Upon the whole there appears to be no sufficient reason for " departing from the conclusion at which we arrived in a case " which came before us early in 1920, though our colleagues sub- " sequently dissented from it in a case arising under the Act of " 1920, that the profits and gains on which a company has been " assessed to and has paid British Income Tax in the first instance " must be regarded as a part of the company's income for the " purposes of Section 43 of the Finance Act, 1916, and that the " company is entitled to claim repayment under the Section if it " has paid Colonial Income Tax on the same profits and gains, " notwithstanding that those profits and gains have been partially " or wholly applied to the payment of debenture interest from which " the company can deduct tax; and the position seems to be the " same under the Act of 1920. The decision of the Courts, though " they do not amount to a direct authority, tend to support this " view. The contrary contention of the Crown involves the " invocation of the provisions of Sections 163 and 164 of the Act " of 1842, or their equivalent, merely on the strength of the use " of the words ' his income ', and it leads logically to a very " narrow restriction of the possibility of relief in respect of the " earnings of a company, if not indeed to the conclusion which " we cannot, and are not asked to, accept, that the Sections " granting relief do not apply to companies at all."

Our decision upon a further question in regard to the rate at which relief should be allowed on the Australian profits, which was in favour of the Crown, has been accepted by the Company.

10. In accordance with the above decision we determined that the total amount of relief allowable to the Company, in terms of duty, for the years in question was as under, it being agreed

between the parties that these figures were correct if our decision was right in principle :—

	£	s.	d.
1916–17	25,644	15	0
1917–18	27,142	10	0
1918–19	49,713	1	3
1919–20	55,005	7	6
1920–21	73,624	10	9
1921–22	73,274	13	4
1922–23	47,161	19	5
1923–24	50,838	6	7

11. The Appellants immediately upon the determination of the claim declared to us their dissatisfaction therewith as being erroneous in point of law and in due course required us to state a Case for the opinion of the High Court pursuant to the Finance Act, 1921, Section 28, and the Income Tax Act, 1918, Section 149, which Case we have stated and do sign accordingly.

P. WILLIAMSON,
N. ANDERSON,
} Commissioners for the Special Purposes of the Income Tax Acts.

York House,
23, Kingsway,
London, W.C.2.
29th March, 1928.

The case came before Rowlatt, *J.*, in the King's Bench Division on the 17th, 18th and 21st January, 1929, when judgment was reserved. On the 25th January, 1929, judgment was given in favour of the Crown, with costs.

The Attorney-General (Sir T. Inskip, K.C.) and Mr. R. P. Hills appeared as Counsel for the Crown and Mr. A. M. Latter, K.C., and Mr. A. M. Bremner for the Respondent Company.

JUDGMENT.

Rowlatt, J.—In this case there is an appeal from the decision of the Special Commissioners upon an appeal to them which was heard at a meeting on the 7th February, 1927, with reference to the taxation for eight years, the first being the year which ended in April, 1917, and the last in April, 1924.

I again feel it my duty to call attention to this gross delay. This is a question which touches not merely the rights of the individual parties, but—a point which affects the affairs of many people—the construction of legislation introduced in 1916, and, in my judgment, it is a shocking thing that these matters should drag

(Rowlatt, J.)

on in this way, whether you look at it from the point of view of the public whose affairs cannot be settled while these questions are outstanding, or from the point of view of the Revenue who are supposed to raise from the Income Tax yearly a sum for the service of the current year. I have drawn attention to this before; it does not do any good. On one occasion the late Lord Chancellor was informed, and apparently believed, that it was due to the existence of points of argument. The points of argument have been got rid of; they do not touch the question. I am not saying whose fault it is, or whether it is the fault of anybody, or whether it could be avoided. All I desire to do is to draw attention to a situation which is extremely regrettable.

Now the question involved arises with reference to the relief introduced by the Finance Act of 1916 in favour of Income Tax payers having a source of income in a Dominion and bearing, in the first instance, double taxation, namely, both under the Dominion laws and under the laws of this country. As regards the first three years before me, it depends upon the construction of Section 43 of the Act of 1916; as regards the fourth year, it depends upon the provisions of the Income Tax Act of 1918; and as regards the last four years, it depends upon the provisions of the Finance Act of 1920, combined with one provision in the Income Tax Act of 1918. As regards all the years, in the first instance, the point depends upon the construction of the principal Sections giving the relief which, to all intents and purposes, with the alteration of a word, are in the same language for this purpose. With regard to the fourth year, there is a subsidiary point as to whether this relief is not forbidden by Section 17 of the Act of 1918; and as regards the last four years, there is a similar subsidiary point as to whether it is not forbidden by that same Section, but with a somewhat new flavour in it, if I may use that word, of the Act of 1920. But the first question is as regards all the years whether this relief can be obtained upon the construction of the Sections giving the relief.

Now the point is this: The Appellants, the Company, Messrs. Dalgety, have a Dominion income; they are an English Company; they pay tax on the Dominion income, and they pay Income Tax on the same income again here; but they have an issue of Debentures outstanding, and the question is whether they can claim relief upon their income less the interest which they have had to pay out of it to the Debenture holders, or whether they can claim relief upon the whole income upon which, in the first instance, they directly do pay United Kingdom Income Tax and have paid, of course, the Dominion Income Tax; in other words, can they get back relief in respect of so much of their income as has to be devoted, and has been devoted, to the payment of their Debenture interest?

(Rowlatt, J.)

Now Section 43 of the Act of 1916 is as follows, and of course this Section does not only apply to companies, because there may be individuals who have a Dominion income of the same sort which is subject to charges. The words of Section 43 are as follows:— "If any person who has paid, by deduction or otherwise, United "Kingdom income tax for the current income tax year on any "part of his income at a rate exceeding three shillings and sixpence "proves to the satisfaction of the Special Commissioners that he "has also paid any Colonial income tax in respect of the same part "of his income, he shall be entitled to repayment of a part of the "United Kingdom income tax paid by him", and then the Section proceeds to define the amount which is to be repaid. I do not think anything turns, I may say at once, upon the words "any part". If the whole of his income falls within this Section, the Section is equally applicable if he has paid it on every part of his income, and the part of the income which is referred to here has no reference at all to any part of the income which he keeps, or to the part which he has to spend in paying his Debenture holders. It is not with reference to that that the word "part" is used. It means: Supposing his other income is outside this region altogether, that of course can be neglected for this purpose. I pass from those words altogether. That was that Section. Now Section 55 of the 1918 Act reproduced it in the same terms so far as we are at present concerned; and Section 27, Sub-section (1), of the Finance Act of 1920 again uses the same words, except that for the word "repayment" it substitutes the word "relief"—"relief from" instead of "repayment of". As I have already said, it is upon the construction of these Sections that the question in the first place turns. As throwing light upon it, a great many considerations were adverted to in the argument before me, as they had been before the Commissioners, and I had the advantage in this case of a very careful judgment by the Commissioners; but as I understand, other Commissioners have come to a different conclusion in another case upon the same subject matter. Included in what was referred to before me were the decisions in three cases dealing with the rights *inter se* as regards this relief of Preference and Ordinary shareholders. I do not think, however, that much assistance is gained in that way towards the elucidation of the present problem. There could never be contemplated the possibility of any claim on the part of a company to deduct its Preference dividends from its taxable income, for any purpose such as the present, and the Preference and Ordinary shareholders are not directly taxable, but are merely participants *inter se* in the burden of the company's tax. Charge holders or Debenture holders of a company, or encumbrancers on the income of an individual, are themselves taxable as on an interest of money or annual payment, though they pay that tax by deduction when paid out of profits already taxed.

(Rowlatt, J.)

Now leaving out of consideration Section 17 of the Act of 1918, which is the Section alleged expresly to forbid what the Company are seeking to do here and which does not apply in the case of all the years under discussion, the question is whether the word "income" means "income less charges". Now it seems to me that within the four corners of Section 43 of the Act of 1916, and Section 27, Sub-section (1), of the Act of 1920, and Section 55 of the intermediate Act of 1918, there is a clear indication of what the answer must be. The enactments award repayment and relief where tax is twice levied on the same income. Now income charged with interest payments only bears double tax in so far as it exceeds the interest paid out of it, and such income in so far as it exceeds the interest paid out of it alone seems to be within the purpose of the Section, and is therefore alone, in my judgment, what is described by the word "income" as used therein. To give an allowance outside the scope of the grievance in view is foreign to the very nature of a relieving section.

On this short ground, and without discussing the bearing of Section 17 in the case of the fourth year, or the last four years, I think the Crown are entitled to my judgment; but I cannot refrain from pointing out the ulterior difficulties which would result from giving effect to the contention of the Company. If that is correct, they receive back or get allowed part of the tax deducted from the Debenture interest. I know of no provision under which they would hold that deducted tax for the Crown, but if they did, we should arrive by a circuity at the same result as if they failed in the claim now in question. If, however, they can retain this sum, what is the position? Suppose a Debenture holder or a charge holder, if it is not the case of a company, has an income below the exemption limit, can he obtain repayment of the full tax when the Crown has not had it, or has he no right to recover it and so must lose his exemption in part when he is clearly entitled to it? There is no provision whereby the company must pass on to him the relief obtained such as exists for Preference shareholders under Section 27, Sub-section (5), of the Act of 1920, which varied the consequences which flowed from Section 43 of the Act of 1916, as decided in the *Scottish Union* case(1).

If this is the extraordinary position as regards the Debenture holder, what, on the other hand, is the position of a company? They possess this repaid tax and can divide it in dividend; they would have it, and could divide it to an extent corresponding to the interest they had paid, even though their income had been insufficient to pay the interest in full; and we should behold a Company in the position of paying a dividend though they had not

(1) The Scottish Union & National Insurance Co. v. New Zealand & Australian Land Co., Ltd., [1921] 1 A.C. 172.

(Rowlatt, J.)

paid their Debenture interest in full—paying the two concurrently in fact—and when they paid the dividend they would either deduct a sum for Income Tax or they would not. If they did, they would deduct tax which they had not paid, for repaid Income Tax cannot be a profit or gain itself taxable, and the shareholders, if below the exemption limit, could not get it back. If, on the other hand, they did not deduct it, the shareholder would get a dividend not tax free, in the common use of that phrase, but immune from tax and outside of Income Tax altogether.

The difficulty in this case is undoubtedly to justify cutting down the word "income" so as to read it as "income less charges". One is not entitled to cut down a plain word so as to give it merely what one thinks is a more reasonable effect, or to provide for what one thinks is a mere *casus omissus*. When one finds, as I think we find here, that to give a word its unrestricted meaning leads to results which fundamentally pervert the clearly intended object of the Section, and, further, cannot be fitted into the other parts of the scheme of the tax, it seems to me that in giving effect to these considerations one is only doing what was done in *Colquhoun* v. *Brooks*(1), as set forth in the famous judgment of Lord Herschell.

For these reasons, I think the Crown succeeds in respect of all the years in question, with costs.

The Company having appealed against this decision the case came before the Court of Appeal (Lord Hanworth, *M.R.*, and Lawrence and Sankey, *L.JJ.*) on the 2nd, 3rd, 6th and 7th May, 1929, when judgment was reserved. On the 6th June, 1929, judgment was given unanimously against the Crown, with costs, reversing the decision of the Court below.

Mr. A. M. Latter, K.C., and Mr. A. M. Bremner appeared as Counsel for the Company, and the Attorney-General (Sir T. Inskip, K.C.) and Mr. R. P. Hills for the Crown.

JUDGMENT.

Lord Hanworth, M.R.—This is an appeal from a judgment of Mr. Justice Rowlatt given on the 25th January, 1929, whereby he reversed the decision of the Commissioners who had decided in favour of Messrs. Dalgety & Company, Limited. From this decision the Crown appealed to Mr. Justice Rowlatt who gave judgment in favour of the Crown, and from his decision Messrs. Dalgety & Company, Limited, have appealed to this Court.

The case raises some intricate and difficult questions of Income Tax law. Messrs. Dalgety & Company, Limited, are a company

(1) 2 T.C. 490.

(Lord Hanworth, M.R.)

incorporated in England under the Joint Stock Companies Acts who carry on business both in Australia and New Zealand. Tax is paid in both those Dominions upon the profits earned by the Company in them. The Company, consequently, claimed the relief which is given by the Income Tax Acts to those who pay both Colonial Income Tax and United Kingdom Income Tax.

There are assessments in eight successive years in respect of which the relief is claimed, namely, the years ending April 5th, 1917 to 1924; but the Sections under which the relief is claimed are not the same in every year. Relief from United Kingdom Income Tax in case of the payment of Dominion Income Tax upon the same profits was first given by Section 43 of the Finance Act, 1916. That Section applies to the three several years ending the 5th April, 1917, 1918, 1919. Then Section 55 of the Income Tax Act, 1918, which came into force on the 6th April, 1919, applies to the relief claimed in respect of the year ending on the 5th April, 1920, and Section 27 of the Finance Act, 1920, applies to the last four years, 1921, 1922, 1923, 1924. Section 43 of the Finance Act, 1916, and Section 55 of the Income Tax Act, 1918, are *in pari materia*. Section 27 of the Finance Act, 1920, expands the terms and method of the relief given into eight Sub-sections. It is possible that different considerations may therefore apply to the first four years in which the relief is given by the simpler Section, and the latter four years to which more elaborate provisions apply.

The authorised capital of the Company during the eight years in question consisted of 200,000 Ordinary shares of £20 each, on all of which £5 per share had been paid up, and 100,000 Preference shares of £10 each, of which 50,000 have been issued and are fully paid. The Company has also issued Debentures and Debenture stock—called hereinafter debentures—which amounted to approximately £2,500,000 during the relevant years. By the terms of the debentures the principal of, and interest upon them were secured upon the whole undertaking and assets of the Company. The business of the Company is that of general merchants, shipping and insurance agents and bankers. Apart from dividends which are taxed by deduction, and income from property which is charged to Income Tax under Schedule A, practically the whole of its income arises from trading profits earned by trading operations in Australia and New Zealand. The control of the Company is exercised in England and consequently all these trading profits are assessed to British Income Tax and, as already stated, Dominion Income Tax has also been paid upon these same profits in Australia and New Zealand before they are remitted to London.

The Commissioners allowed the full relief claimed. That relief was cut down but not refused altogether by the judgment of Mr. Justice Rowlatt. No question arises upon the figures in the case.

(Lord Hanworth, M.R.)

The sole point in dispute is whether the sum on which relief given to the Company because of its having paid Dominion Income Tax is to be calculated on the whole amount of the profits earned by it in Australia and New Zealand and on which both income taxes have been paid, or only on the balance of these profits remaining, after deducting from them the sum required out of them to pay the interest on its debentures which could not be provided and paid out of the Company's income arising in the United Kingdom.

It is agreed that the income arising in the United Kingdom should be considered to have been used in the first place, and *pro tanto*, in satisfaction of the interest on the debentures. This income did not suffer payment of Dominion Income Tax, so no question arises about it in the present case. The question is whether relief should be allowed in respect of the additional sum out of the trading profits remitted from the Dominions and which has suffered Dominion Income Tax and was needed to pay the balance of the debenture interest. Some simple figures will make the point clear. For the year ending April, 1919, debenture interest had to be paid to the amount of £104,065. That interest was in part satisfied by taxed dividends and Schedule A profits—home profits they may be called—to the extent of £48,820, leaving a further sum to be provided for the payment of the debenture interest of £104,065 minus £48,820 —£55,245. This sum was provided out of the total profits of £419,269 which came over here from the Dominions and was taxed there.; but the Revenue authorities refuse to allow relief from Dominion Income Tax upon this particular sum, although they do allow relief upon the remainder of the profits so remitted after deduction of the sum used to pay the balance of the debenture interest: in figures, £419,269 minus £55,245—£364,024. It is not disputed that the whole sum of £419,269 had paid Dominion Income Tax and also United Kingdom Income Tax. But the contention of the Crown is that the Company have not in truth and in fact paid the two taxes upon part of it, namely, upon this sum of £55,245, because the Company when they paid or distributed that sum to the debenture holders deducted—as they were required to do under the Acts—Income Tax upon these payments of interest, and were so to speak recouped, or at any rate cannot be said to have paid, the United Kingdom Income Tax on these sums which total £55,245.

It is important, therefore, to consider the principle on which deductions of Income Tax are made from payments of interest and the effect of them. The provision for them is now embodied in the General Rules 19 *et seq.* under the Income Tax Act, 1918, which replace previous enactments in the same sense. Rule 19—in short—provides that "Where any yearly interest of money . . . is "payable wholly out of profits or gains brought into charge to tax, "no assessment shall be made upon the person entitled to such

(Lord Hanworth, M.R.)

"interest . . . but the whole of those profits or gains shall be "assessed and charged with tax on the person liable to the "interest . . . without distinguishing the same, and the person "liable to make such payment, whether out of the profits or gains "charged with tax or out of any annual payment liable to deduction, "or from which a deduction has been made, shall be entitled, on "making such payment, to deduct and retain thereout a sum "representing the amount of the tax thereon at the rate . . . of "tax in force during the period through which the said payment "was accruing due. The person to whom such payment is made "shall allow such deduction upon receipt of the residue . . . and "the person making such deduction shall be acquitted and discharged "of so much money as is represented by the deduction, as if that "sum had been actually paid." There are a number of ancillary provisions. Rule 20 deals with the profits and gains of a company which are to be computed before any dividend is made to the shareholders. Rule 21 deals with the position when the payment of the annual interest is made not out of, or not wholly out of, profits or gains brought into charge. In that case it is specifically provided that the person making the payment is to hand over to the Inland Revenue the amount so deducted which was not provided out of profits or gains that had been brought into charge; and under Rules 22 and 23 provision is made for the settling of disputes as to the deductions made or to be made, and for a penalty if the person to whom the interest is payable refuses to allow the deduction for the tax. From these Rules it is clear that (*a*) the tax so deducted is the tax that ought to be paid by the person entitled to the interest; (*b*) no assessment is made upon the person entitled to the interest, and that the system of deduction—in other words, payment at the source—is adopted in respect of his liability; (*c*) an express provision is made as to when the person making the payment subject to the deduction of the tax is to render an account and hand over the deductions to the Crown—that is when the interest paid is provided out of moneys not charged, or not wholly charged, to tax; (*d*) but, that when the interest is paid out of profits and gains brought into charge to tax, in that case the person making the payment or interest is entitled to deduct and retain thereout the sum that represents the tax deducted; (*e*) the person making the deduction "shall be "acquitted and discharged of so much money as is represented by "the deduction, as if that sum had been actually paid". At one time it was suggested that a company so paying Income Tax on its profits and deducting it from interest on dividends paid to its shareholders was acting as agent for its shareholders. That view is dispelled by the speech of Lord Cave in *Commissioners of Inland Revenue* v. *Blott* (1), [1921] 2 A.C. at page 171, when he says that no

(1) 8 T.C. 101, at p. 136.

(Lord Hanworth, M.R.)

agency properly so called is involved. This is clear, I think, if one keeps in mind that the company is a taxpayer and has to pay Income Tax on its profits before deductions, and that the person entitled to the yearly interest of money is also a separate taxpayer independently liable to pay his tax.

So far, therefore, upon consideration of these Rules, it would seem that the contention of the Company is correct. There is no agency. The tax deducted is the tax that is due from the person to whom the interest is paid, and no set-off, unless specially provided and indicated, can arise between the tax paid by the Company and the tax payable by a wholly different taxpayer. Further the provision for handing over the tax collected does not apply to the present case at all.

The question raised is not in respect of the payment of dividends as to which special legislation has been made. Section 27, Subsection (5), of the Finance Act, 1920, in terms provides that the relief obtained in respect of the payment of Dominion Income Tax shall be passed on to the shareholders and that the deduction made from any payment of dividend to them shall not exceed "the rate "of the United Kingdom income tax as reduced by any relief from "that tax given under this section in respect of any payment of "Dominion income tax". We are here considering that payment of interest to debenture holders which is of a different nature from the distribution of dividends to the shareholders and is not specially dealt with anywhere as is the Income Tax deducted from any dividends in Sub-section (5). It is an expense which has to be met out of the profits or gains. There is a specific prohibition against the allowance of any deduction of such an expense in the ascertainment of profits; see Rule 3 (*l*) of the Rules under Cases I and II of Schedule D.

The effect of the Sections which I have referred to, or their predecessors, was considered in *London County Council* v. *Attorney-General* (1), [1901] A.C. 26. The point that arose for decision was whether the right to retain the tax deducted prevailed in the circumstances of that case. Some interest upon stock was provided out of moneys which had paid tax under Schedule A, and not under Schedule D. Section 24 of the Act of 1888 contained three words which are omitted from Rule 21—"and not payable or not wholly "payable out of profits or gains brought into charge *to such tax*". The argument was that such tax meant Income Tax under Schedule D and did not include tax paid under Schedule A. That argument was held unsound by the House of Lords, and the deductor was held entitled to retain the sum equivalent to the tax deducted. Lord Davey in his speech considering this right of deduction says at page 42 (2): "It is not open to doubt, and was not disputed, that

(1) 4 T.C. 265. (2) *Ibid.* at p. 298.

(Lord Hanworth, M.R.).

"Sections 60 and 102 alike mean that the person paying the yearly "interest may deduct and retain the amount for his own benefit, "and that the scheme of the Act is so far clear and is in favour of "the taxpayer", and later on (1) "therefore, the Crown receiving "the tax on the whole income, in the first instance, from the owner, "has no further claim against the mortgagee or annuitant, on whose "account the owner is deemed to have paid as well as on his own". Summing it up on page 45 (2): "I hold that the London County "Council are entitled to retain for their own benefit so much of the "deduction made by them from the interest paid by them to their "mortgagees in respect of Income Tax as is equal to the Income Tax "paid by them on their real estate under Schedule A, or, which "comes to the same thing, to account to the Crown only for the "deducted Income Tax on so much of the interest as is not paid out "of their income which has already been taxed". These passages make it clear that the tax deducted is paid on quite a different account from that of the deductor—namely, the taxpayer who is entitled to have the interest paid to him; and further that the right to retain the tax deducted is one which is given clearly and ought to be enforced in favour of the deductor. Further in *Sugden* v. *Leeds Corporation*, [1914] A.C. 483, Lord Haldane, Lord Chancellor, at page 490 said (3): "But the Acts give him the right to deduct "the tax due from the recipient in respect of the annual payments, "and, as he has himself already paid tax on the whole profits, to "retain for himself the amount so deducted". The case of the *Scottish Union and National Insurance Company* v. *New Zealand and Australian Land Company, Limited*, [1921] 1 A.C. 172, supports this view. It overruled the decision of Mr. Justice Astbury in *Rover* v. *South African Breweries*, [1918] 2 Ch. 233, which had refused to accept the proposition that the company's tax and the shareholder's tax are two distinct things. It is pointed out in the *Scottish Union* case that it is the company, and the company only, who could qualify for relief by paying the two income taxes in the Dominion and in the United Kingdom. Lord Finlay, at page 182, does not accept the proposition that the company were agents for the shareholders in the payment of the Dominion tax. The case appears to negative the view that the company can only deduct the net amount of the United Kingdom tax after deduction of the sum obtained by way of relief therefrom.

Mr. Justice Rowlatt has felt the difficulty that arises upon the plain terms of the Sections giving relief, all of which begin: "If any "person who has paid by deduction or otherwise United Kingdom "income tax". The words "by deduction or otherwise" are of no significance in this connection. They merely embrace among those who are to have the relief, those who have paid the tax by deduction,

(1) *Ibid.* at p. 299. (2) *Ibid.* at p. 301. (3) 6 T.C. 211, at p. 253.

(Lord Hanworth, M.R.)

as well as those who have paid directly. Can the word "paid" be cut down, or altered, so as to mean borne: or to effect the same result can the words "in respect of the same part of his income" be read as "in respect of the same part of his income less charges"? Mr. Justice Rowlatt adopts the latter course under the authority of the speech of Lord Herschell in *Colquhoun* v. *Brooks* (1). In that case the Court of Appeal, 21 Q.B.D. 52, held the operation of the Statute to be limited to what that Court thought it ought to deal with, and no more, and that it did not include "an absolutely "foreign trade". The decision was affirmed in the House of Lords, 14 App. Cas. 493, but the reasoning of the Court of Appeal was not accepted. The *ratio decidendi* of the House of Lords was that the interpretation put upon the wide words of the charging Section must be cut down in view of the absence of machinery to carry into effect the larger, though possible, meaning. This question of the absence of machinery is important. It is a strong step to give such a construction to an Act of Parliament as necessitates some alteration of its wording, and that because of a preconceived notion of what the Statute was intended to mean and effect. Lord Sterndale's observations on this subject in *Sheldrick* v. *South African Breweries, Limited*, are at pages 184 and 185 of [1923] 1 K.B. He rejects an interpretation for which good reasons were offered by Counsel to explain what the Legislature must have intended, and he bases his decision "upon the plain words of the Sub-section, which I think "are not equivocal and which, if they do not convey the intention "of the Legislature should be altered by the Legislature so as to "express what it did intend". The same difficulty as to machinery arises in the present case, if the solution adopted by Mr. Justice Rowlatt is accepted, for it was forcibly pointed out by Mr. Latter that there is no machinery provided whereby the income less charges is to be arrived at for the purposes of the relief Sections. I, therefore, reject an interpretation which requires machinery that is not provided, as was decided by the House of Lords in *Colquhoun* v. *Brooks*.

The other argument is that "paid" in the relief Sections connotes not merely payment but "paid and borne". On this head it is to be noted that the words "borne or is liable to bear" are actually found in Sub-section (1) of Section 27 of the Act of 1920, the Section which at present gives and has developed the scheme of giving relief owing to the payment of Dominion Income Tax. Those words were necessary to deal with the proper estimation of the United Kingdom tax, in view of the modern system of excusing payment upon certain allowed portions of income and other reliefs that have been allowed in the assessments for the United Kingdom tax. But though the words are found in the very Sub-section, the

(1) 2 T.C. 490.

(Lord Hanworth, M.R.)

commencement of the Section still remains: "If any person who "has paid". It would surely, if the Legislature had meant it, have been easy to have introduced words and made the Section run: "If any person who has paid and borne". Again Sub-section (5) was introduced to alter the effect of the decision in the *Scottish Union* case. It provides that the deduction from dividends paid shall be at "the rate of the United Kingdom income tax as reduced by any "relief from that tax given under this section in respect of any "payment of Dominion income tax". That Sub-section expressly is not intended to cover the present case, for the inclusive definition given immediately before Sub-section (5) applies only to Sub-section (4). In my judgment, therefore, it is not possible to alter the Section and read "paid" as equivalent to "paid and borne".

There remains the question whether the relief claimed is inhibited and barred by Section 17 of the Income Tax Act, 1918. On this point I accept the careful reasoning of the Commissioners, and do not desire to add to it more than to state this by way of reinforcement of their view. If Section 17 inhibits the relief, then this argument carries the Attorney-General too far. It would forbid too much. I think Section 17 must be read in its proper setting, and as referring to exemption and abatements—now "allowance or "deduction"—which belong to that part of the Act where it is found. There may be difficulties caused by Section 64, Sub-section (1) of the Finance Act, 1920, and construing Part II of that Act "with the "Income Tax Acts"; but I cannot hold that the relief given by Section 27 of that Act of 1920 is to be nullified *instanter* by Section 17 of the Income Tax Act, 1918, contrary to the plain words of Section 27, words which for the reasons I have given must, in my judgment, be interpreted as they stand, to mean what they say.

The appeal must be allowed with costs here and below, and the decision of the Commissioners restored.

Lawrence, L.J.—This appeal raises a question which is not free from difficulty, namely, whether the relief in respect of Dominion Income Tax to which the Company is entitled ought to be calculated on the whole amount of its profits earned in the Dominions or only on the balance of such profits after deducting therefrom so much of the interest paid by it on its debentures as its income arising in the United Kingdom was insufficient to meet.

The facts which have given rise to this question have been fully stated by the Master of the Rolls, and there is no need to repeat them.

Mr. Latter contended that the Company, having paid United Kingdom Income Tax on the whole of its income earned in the Dominions and having also paid Dominion Income Tax in respect of

(Lawrence, L.J.)

the same income, is entitled to relief on the whole amount of such income; and that its right to this relief is not affected by the fact that the Company was entitled to deduct and has in fact deducted United Kingdom Income Tax on payment of the debenture interest.

The Attorney-General on the other hand contended that as the Company had deducted the United Kingdom Income Tax from the debenture interest and had therefore not ultimately borne such tax, it had not in fact "paid" such tax within the meaning of the relevant Sections of the Income Tax and Finance Acts; further, that in so far as the profits of the Company were applied in payment of the debenture interest they were not "income" of the Company within the meaning of those Sections; and lastly, that in respect of the four years ending on the 5th April, 1924, the Company (by virtue of Section 17 of the Income Tax Act, 1918) was not entitled to relief in respect of income, the tax on which it was entitled to deduct from any payment made by it to its debenture holders.

The case is somewhat complicated by the fact that the relief claimed by the Company extends over a period of eight years and that different enactments apply to different parts of that period. The question we have to decide, however, turns mainly on the true meaning of the words "any person who has paid, by deduction or "otherwise, United Kingdom income tax on any part of his income" which occur in each of the three relevant Sections, viz:—Section 43 of the Finance Act, 1916; Section 55 of the Income Tax Act, 1918; and Section 27 of the Finance Act, 1920.

The first point to be determined is whether "income" in those Sections means "taxable income" or "income less charges".

As a general rule the word "income" is used in the Income Tax Acts to denote "taxable income"; see (amongst other instances pointed out by Mr. Latter) Section 164 of the 1842 Act and Section 27 (1) of the 1918 Act. In the former Section the expression is "the income of such claimant" and in the latter "his income" and in both cases the taxable income and not the income less charges is obviously meant. There are no doubt instances in the Income Tax Acts where the context clearly shows that "income" means "income less charges" especially in those Sections which deal with exemption from or abatement of Income Tax dependent upon the claimant's total income from all sources, in which cases however there is usually found a provision that relief is not to be granted in respect of any income the tax on which the claimant is entitled to charge against any other person.

In my opinion there is nothing in the context in any of the relevant Sections to indicate that the word "income" is intended to mean anything other than the income in respect of which the claimant has to pay Income Tax. No machinery is provided for

(Lawrence, L.J.)

ascertaining the net income going into the pocket of the person claiming relief in respect of Dominion Income Tax such as is to be found in the provisions giving relief dependent upon small incomes or upon the claimant's total income from all sources.

The Attorney-General placed some reliance on the complicated provisions of Section 27 of the 1920 Act dealing with the ascertainment of the appropriate rate of Income Tax for the purpose of arriving at the amount of the relief, as showing that the word "income" in the relevant Sections means "income less charges". I agree with the Commissioners that the obscure provisions of that Section as to the appropriate rate of the United Kingdom tax (which were inserted for the first time in the 1920 Act) do not have the effect of cutting down the meaning of the word "income" in the relevant Sections of the earlier Acts nor in the earlier part of Section 27 of the 1920 Act. The appropriate rate, however ascertained, becomes the standard rate and the amount of the income used as a divisor in determining that rate bears no necessary relation to the income on which relief is to be given.

On the whole, therefore, I am of opinion that the Commissioners were right in their view that "income" in the relevant Sections means "taxable income".

The next question is whether the Company has "paid" the United Kingdom Income Tax within the meaning of the relevant Sections. The Sections give relief to the person who has paid both the United Kingdom Income Tax and the Dominion Income Tax in respect of the same income. If that person can show that he has paid the double tax he has satisfied all the requirements of the Sections and is entitled to the relief. The relief is from United Kingdom Income Tax and not from Dominion Income Tax.

The Attorney-General contended that "paid" in the context in which it is found means "ultimately borne". On this point I think that useful guidance is to be obtained from the decision of the House of Lords in the *Scottish Union Case*, [1921] 1 A.C. 172. In that case the relief had been granted by the taxing authority and the question to be decided was as to the incidence of the burden of the tax as between the preference shareholders and the ordinary shareholders. The case therefore affords no assistance on the question whether profits applied in payment of debenture interest are or are not part of the "income" of the company earning them, as both the rival claimants were members of the company and the profits distributed amongst them undoubtedly formed part of the income of the company, whereas debenture holders are creditors and not members of the company. On the question of the meaning of the word "paid" however, the case has in my opinion a distinct bearing. The preference shareholders ultimately bore the burden of the full United Kingdom Income Tax on the dividends paid to them

(Lawrence, L.J.)

and yet this fact apparently did not suggest any doubt either to the taxing authority or to the Court as to the right of the company to claim repayment of a portion of that tax for the benefit of the ordinary shareholders who had not borne any part of it.

The effect of this decision in so far as it affects shareholders is got rid of by Section 27 (5) of the 1920 Act, and in *Sheldrick's* case, [1923] 1 K.B. 173, the preference shareholders were held entitled to the benefit of the relief although they had not borne the burden of the Dominion Income Tax. On the question whether the relevant Sections were intended to operate only in those cases in which the ultimate burden of the double tax should happen to fall on the same person I can see no distinction in principle between the case of a company deducting the tax from the preference dividends and the case of a company deducting the tax from the debenture interest, except that, under the 1920 Act, the company in the former case is bound to pass on the relief it obtains to its shareholders.

Applying the principle underlying the decisions in the two cases I have mentioned to the point now under consideration I can see no valid ground why a company should not obtain for the benefit of its shareholders relief in respect of the double tax paid by it merely because the burden of the United Kingdom Income Tax on the debenture interest was ultimately borne by the debenture holders.

The Company has in the natural and literal sense paid both the United Kingdom Income Tax and the Dominion Income Tax. No one else has paid or become liable to pay both these taxes, and no one else can claim relief under the relevant Sections. The Company is not bound to pass on this relief to the debenture holders. There is nothing in the various Acts to require the Company, as a condition of obtaining relief, to show that it will ultimately have to bear the burden of the United Kingdom Income Tax which it has paid and from which it claims relief. The Legislature has not provided any means for enabling the taxing authority to ascertain on whom the burden of the United Kingdom Income Tax paid by the Company will ultimately fall, and in my opinion the obvious inference to be drawn from the absence of any such provisions is that the taxing authority is not concerned with that question.

For these reasons I am of opinion that the contention of the Crown that " paid " means " ultimately borne " is not well founded.

There remains the question as to the effect of Section 17 of the 1918 Act. The substance of this Section appeared first in Section 163 of the 1842 Act. It re-appeared in Sub-section (5) of Section 19 of the 1907 Act and finally in Section 17 of the 1918 Act.

The enactment in question applied at first to the exemption from Income Tax of persons with small incomes and subsequently to abatements and other reliefs dependent upon the total income

(Lawrence, L.J.)

from all sources of individuals. The Attorney-General was therefore constrained to admit that this enactment could only apply if at all to the last four years of the period under review, that is to say, after the coming into force of the 1920 Act.

The Attorney-General based his contention on the grounds (1) that, by virtue of Section 64 of the 1920 Act, Part II of that Act (in which Section 27 is to be found) was to be construed together with the Income Tax Acts and (2) that the word "relief" was used for the first time in Section 27 instead of the word "repayment" which occurred in the earlier enactments.

In my judgment this contention fails. Although one ought not to be surprised at anything contained in the Income Tax and Finance Acts, I agree with Mr. Latter that it would be most startling if an alteration in the law seriously affecting a large class of tax-payers were to be brought about by any such method.

In my judgment the plain answer to the contention of the Crown is that Section 17 of the 1918 Act is one of a series of Sections relating to exemption, abatement and relief depending upon total income from all sources and has nothing to do with relief in respect of Dominion Income Tax; that the word "claimant" in Section 17 (as in the preceding Sections 10 to 15) means the individual described in Section 9 who claims and proves that his total income from all sources does not exceed a certain amount; and lastly, that Section 27 (5) of the 1920 Act shows that Section 17 of the 1918 Act does not apply to relief in respect of Dominion Income Tax as it provides for the passing on of such relief in cases where the company is entitled to deduct and retain United Kingdom Income Tax from payments made to its shareholders.

For these reasons, which are substantially those given by the Commissioners, I am of opinion that Section 17 of the 1918 Act does not preclude the Company from obtaining relief under Section 27 of the 1920 Act in respect of any income the United Kingdom Income Tax on which it is entitled to deduct and retain out of any payment of debenture interest.

In the result the appeal succeeds and should be allowed with costs.

Sankey, L.J.—The Appellants are an incorporated company whose business is that of general merchants, shipping and insurance agents and bankers. Apart from dividends which are taxed by deduction and income from property which is charged to Income Tax under Schedule A, practically the whole of its income arises from trading profits earned by trading operations in Australia and New Zealand, but as the control of the Company is exercised in England such trading profits are all assessed to British Income Tax under Case I of

(Sankey, L.J.)

Schedule D. Dominion Income Tax has also been paid on such trading profits arising in Australia and New Zealand. They have a Dominion income and they pay Dominion Income Tax upon that income. They also pay Income Tax again in England and they have an issue of debentures outstanding. The question is whether they can claim relief upon their income, less the interest which they have had to pay out of it to the debenture holders, or whether they can claim relief upon the whole income upon which in the first instance they directly pay United Kingdom tax and have also paid the Dominion Income Tax.

It must be added that in paying their debenture interest the Company pay such interest less the United Kingdom Income Tax. The relief claimed extends over a period of years, 1916 to 1923, and as regards the first three years it depends upon the construction of Section 43 of the Finance Act, 1916. As regards the fourth year it depends upon Section 55 of the Income Tax Act, 1918, and as regards the last four years it depends upon Section 27 of the Finance Act, 1920.

With regard to the fourth year there is a point as to whether this relief is not forbidden by Section 17 of the Income Tax Act, 1918, and as regards the last four years there is a similar point as to whether it is not forbidden by that same Section. Relief in respect of United Kingdom Income Tax where a person had already paid a Colonial Income Tax was originally granted by the 1916 Act, was continued from year to year and is now regulated by the code contained in Section 27 of the 1920 Act.

There are verbal differences between these various Sections which however do not in my opinion affect the point at issue, which depends upon the proper construction of Section 27 of the 1920 Act. It is not necessary for me to read that Section again; it is a long Section and has been frequently read in the course of the case. The real question for determination is: Have the Appellants paid within the meaning of Section 27 of the 1920 Act and the other cognate Sections United Kingdom Income Tax on any part of their income upon which they have also paid Colonial Income Tax?

In order to answer this question properly the meaning of two words "paid" and "income" has to be determined. (1) Has the Company "*paid*" United Kingdom Income Tax—(2) "on any part of" its "*income*"?

The Appellants say: We have paid because we have in fact, to use a neutral word, handed over the amount of the tax to the Crown. The Crown say: You have not paid because, although you have handed over the amount to the Crown, you have deducted it from the debenture interest and you are not entitled to the relief claimed because you have not borne the burden.

(Sankey, L.J.)

The real question after all is the meaning of the word "paid", upon which the meaning of the word "income" may shed some light. It would be a strange result if on a true interpretation of the Section relief were granted where there had been, as in this case, no burden, but if that be the proper interpretation of the Section the Court must give effect to it however much they may feel their decision would defeat the real object of Parliament.

In construing Income Tax Acts one must not forget the canon to be employed. The Court is not to be guided so much by the objects which they think such Acts are to achieve as by considering whether the words of the Act have reached the alleged subject of taxation. This construction was laid down with great clearness in two cases by Lord Halsbury. In *Lord Advocate* v. *Fleming*, [1897] A.C. 145, at p. 152, he said in dealing with such Acts: "We have no governing "principle of the Act to look at: We have simply to go on the Act "itself to see whether the duty claimed under it is that which the "Legislature has enacted." In *Tennant* v. *Smith*, [1892] A.C. 150, an earlier case, he said (1): ". . . in a taxing Act it is impossible, I "believe, to assume any intention, any governing purpose in the "Act, to do more than take such tax as the Statute imposes. In "various cases the principle of construction of a taxing Act has been "referred to in various forms, but I believe they may be all reduced "to this, that inasmuch as you have no right to assume that there "is any governing object which a taxing Act is intended to attain "other than that which it has expressed by making such and such "objects the intended subject for taxation, you must see whether a "tax is expressly imposed. Cases, therefore, under the taxing Acts "always resolve themselves into a question whether or not the "words of the Act have reached the alleged subject of taxation."

What then is the meaning of the word "paid". It must be given its natural and primary meaning rather than an artificial and ultimate meaning. If, for example, A and B owe C £10 and A hands over a £10 note to C, A has paid C and none the less because he can get back £5 from B. So too a person has paid Income Tax although subsequently to the payment he may be entitled to get it back because he was not liable to pay the particular amount. In such a case the fact of payment is one of the conditions precedent to relief.

Over and above this, this Court at any rate is bound by authority as to the meaning of the word "payment". In *Scottish Union and National Insurance Company* v. *New Zealand and Australian Land Company, Limited*, [1921] 1 A.C. 172, it is stated at the top of page 174 that the United Kingdom Income Tax was paid by the company, but the argument for the Appellants on page 176 was that the company had not in fact paid United Kingdom Income Tax on its profits brought into charge.

(1) 3 T.C. 158, at p. 163.

(Sankey, L.J.)

It appears therefore that the question whether it had paid or not was directly involved and the above argument was rejected. Lord Finlay for example says, on page 184: "The Company has in "fact paid the United Kingdom Income Tax and it is the Company "that is entitled to the repayment received". In these circumstances both reason and authority compel us to hold that the Company in the present case have paid the tax. The learned Judge in his judgment says: "The enactment awards repayment and "relief where tax is twice levied on the same income", and in the present case the tax has been twice levied on the same Company and the consideration that the Company have charged the tax against the debenture holders does not alter the fact that the tax has been levied on the Company.

What is the meaning of the word "income"? That word is used in many collocations in the Income Tax Act and various Finance Acts, as for example "total income from all sources"; "earned income"; "total income for purposes of the Super-tax". It is however always necessary to consider not generally what its meaning is, but what is its meaning in the particular place in which it finds itself. I think the word here must mean "taxable income" —that is the whole income upon which the tax is levied, which included the debenture interest; see Schedule D of Income Tax Act, 1918, Rule 3, under Cases I and II, sub-head (*l*), which provides that annual interest is not to be deducted in computing the amount of the profits or gains to be charged.

In my view Section 17 does not refer to relief granted in respect of United Kingdom Income Tax where a person has already paid Colonial Income Tax. Historically that Section is the direct descendent of Section 163 of the Income Tax Act, 1842. The fact that it appears in a rather different place in the Income Tax Act, 1918, cannot make it apply to a relief which it was not meant to apply to when such relief was originally granted, still less to a relief which was not in terms granted till two years later. In my view the argument is best put by the Commissioners in the present case as follows: "Section 17 reproduces in substance a limitation contained "in Section 163 of the Income Tax Act, 1842, and both in substance "and in form (except for the substitution of 'claimant' for "'individual') a limitation contained in the provisions of the "Finance Acts of 1907 and 1916 as to relief on earned and unearned "income respectively. Section 163 of the Act of 1842 related to the "conditions on which persons with small incomes could claim "exemption from Income Tax, and it was subsequently applied to "claims for abatement and other reliefs dependent on total income "from all sources . . . The 'claimant' referred to in Section "17, as in Sections 10 to 15, is an individual described in Section 9 "who claims and proves that his total income from all sources does

(Sankey, L.J.)

"not exceed a specified amount. The accident that in the Act as "finally printed Section 17 appears as a separate Section cannot "have the effect that the Consolidation Act has extended the scope "of this provision to classes of claimants to whom it did not "previously apply".

I am therefore of opinion that the appeal should be allowed, with costs.

Mr. Bremner.—I understand your Lordships' Order is that the appeal is allowed with costs here and below, and the decision of the Commissioners is restored.

Lord Hanworth, M.R.—Yes, Mr. Bremner.

Mr. Bremner.—If your Lordship pleases.

The Crown having appealed against this decision, the case came before the House of Lords (Lord Buckmaster, Viscount Dunedin and Lords Warrington of Clyffe, Thankerton and Macmillan) on the 20th February and on the 13th March, 1930, when judgment was reserved. On the 4th April, 1930, judgment was given unanimously against the Crown, with costs, confirming the decision of the Court below.

The Attorney-General (Sir W. A. Jowitt, K.C.) and Mr. R. P. Hills appeared as Counsel for the Crown, and Mr. A. M. Latter, K.C., and Mr. A. M. Bremner for the Company.

JUDGMENT.

Lord Buckmaster.—My Lords, by Section 27 of the Finance Act, 1920, it is enacted that "If any person who has paid, by deduction "or otherwise, or is liable to pay, United Kingdom income tax for "any year of assessment on any part of his income proves to the "satisfaction of the Special Commissioners that he has paid Dominion "income tax for that year in respect of the same part of his income "he shall be entitled to relief from United Kingdom income tax "paid or payable by him on that part of his income at a rate thereon "to be determined as follows:—(*a*) If the Dominion rate of tax "does not exceed one-half of the appropriate rate of United Kingdom "tax, the rate at which relief is to be given shall be the Dominion "rate of tax: (*b*) In any other case the rate at which relief is to be "given shall be one-half of the appropriate rate of United Kingdom "tax." The meaning of that section is the chief issue of this appeal.

It reproduced with some alterations, immaterial for the present purpose, Section 55 of the Income Tax Act, 1918, which in turn was the re-enactment of Section 43 of the Finance Act, 1916.

(Lord Buckmaster.)

In the Act of 1918 the expression "United Kingdom income "tax" is defined for purposes of the Section as "income tax "chargeable in accordance with the provisions of this Act" and this is only altered in the later statute by substituting the words "the Income Tax Acts" for the last two words of the former definition. These are all the statutory provisions that need immediate attention; the dispute as to their meaning arises in the following way.

The Respondents are a company incorporated in England under the Companies Acts and carrying on a business of merchants, insurance agents and bankers, both in the United Kingdom and in New Zealand and Australia. Its income chiefly arises from operations carried on in the latter countries, and in respect of such income it is liable to Income Tax in the United Kingdom and in those Dominions.

For the years in question the Company paid the full United Kingdom Income Tax on all its profits and gains and also the Dominions taxes on so much as was earned within their jurisdiction. In these circumstances it claimed relief from the double tax for the years beginning April, 1916, and ending April, 1924. The claim necessarily depended, as to the portion up to April, 1920, upon the earlier, and after that period upon the later, statute, but, as already pointed out, the difference between the two is immaterial for the present purpose.

The claim was disallowed by the Commissioners of Inland Revenue upon the ground that the Company had issued debentures and in paying interest thereon had deducted the full amount of the United Kingdom Income Tax. If, therefore, the claim were allowed in full the Company would receive back a sum which would cause the amount of profits distributed by way of dividend to the shareholders to escape the full burden of tax measured in terms of the rate imposed in the United Kingdom.

The actual figures are not material. The question in dispute can be stated in general terms and it is this. If a company registered and carrying on business in the United Kingdom has issued debentures charging its total assets with repayment of capital and interest, can it obtain relief in respect of Income Tax paid in the Dominions on the amount of all the profits and gains that have paid double tax, or only on the residue after deduction of the debenture interest properly payable out of the profits that are doubly taxed?

The Special Commissioners held the Company entitled to the relief they claimed. Mr. Justice Rowlatt took a different view, but the opinion of the Special Commissioners was restored by the Court of Appeal.

(Lord Buckmaster.)

I have intentionally stated the proposition in the limited terms applicable to the Respondent Company and have omitted the consideration of the case where the debentures create no security—a case less favourable to the Crown.

It is plain that the right conclusion to be drawn must depend upon the meaning of the words "income" and "paid" in the relevant Sections. According to the contention of the Crown the former means income after deducting all payments charged upon it, and the latter means paid without recourse for its recoupment. This may well be a reasonable view of what ought to be done in the circumstances, but it cannot be too often repeated that our duty is not to see what, in our judgment, the Legislature might reasonably do, but that which their Acts declare that they have done, whether by way of imposed burden or of provided relief.

In case of evenly balanced uncertainty the probability of a wise purpose must be considered and may turn the scales, and so also must it be borne in mind where, without some such concession, the words would have no rational meaning, but in all Acts the words used, interpreted as part of the whole Statute, constitute the proper guide.

Taking the words in order there can be no doubt the Company did pay "United Kingdom income tax" on the full amount. The Income Tax charged "in accordance with the provisions of the "Income Tax Acts" was charged on the whole of its profits and gains. Nothing less would have been accepted and no other person was liable to make the payment. But it is urged that even if this be accepted, to the extent of the debenture interest, the payment was made on behalf of the debenture-holders. To this extent that is true, namely, that, having paid, the Company was entitled to deduct the tax from the debenture interest, and, to the extent of that deduction, it was the debenture-holders' tax that was thus discharged. But it was not the debenture-holders who made the payment, but the Company. By Section 209 of the Act of 1918, which remains unrepealed, it is expressly provided that in arriving at the amount of profits or gains for the purpose of Income Tax "no deduction shall be made on account of any annual interest, "annuity or other annual payment to be paid out of such profits "or gains in regard that a proportionate part of the tax is allowed "to be deducted on making any such payment", and by General Rule 19 of the Act of 1918 it is expressly provided that the whole of the profits and gains shall be assessed and charged with tax on the person liable to the interest or annual payment without distinguishing the same. In accordance with this the Company and they alone could be assessed, from them alone was the amount of the assessment claimed, by them alone was it paid, and they were

(Lord Buckmaster.)

prohibited from making any deduction from such assessment in respect of annual sums charged on their profits.

The definition in Section 55 expressly invests the words "United "Kingdom Income Tax" with the meaning that it is the tax chargeable in accordance with the provisions of the Act, and that tax is chargeable on all the profits and gains and the amount paid is the amount which the Company are bound to pay and for which they are alone responsible.

If there had been no debentures the claim for relief could not have been resisted and the existence of the debentures cannot in my opinion limit the Company's rights and give greater rights to the Crown. It is only the application of the income that has caused the difficulty and with this the taxing authority has no direct concern.

The case of the *Scottish Union* (1) [1921] 1 A.C. 172, has no direct bearing on the present one, for in that case the division of profits was as between different classes of shareholders who together constituted the company, thus a similar result ensued, for the dividend on the preference shares was paid after the deduction of the full United Kingdom Income Tax with the result that there, as here, the ordinary shareholders received the full benefit of a relief based on a sum not measured by their share of the profits but on the total amount. The fact, however, that the distribution was amongst members of the company and that the company as a whole was in no way advantaged really robs the case of all value, and I think even prevents its use for the purpose for which it was employed by Lord Justice Lawrence.

A further argument was, however, based on the words of Section 17 of the Act of 1918, which is in these words, "A claimant "shall not be entitled to exemption, abatement or relief, in respect "of any income the tax on which he is entitled to charge against "any other person, or to deduct, retain or satisfy out of any payment "he is liable to make to any other person." The words are apt to cover the present case: the question is do they apply? They are to be found in Part III of the Act of 1918 which is headed "Exemption, Abatement and Relief".

This part of the Act is confined to specified claims for relief; it begins with Section 9 and proceeds down to and including Section 15 to state the cases in which relief may be claimed. Section 16 shows how the allowance may be made and Section 17 then follows; the remaining sections of this part of the Act deal with the machinery for making and regulating the claims arising under the earlier Sections. In this same Act by Section 55 the provisions with regard to the double tax are first introduced—neither

(1) Scottish Union and National Insurance Company v. New Zealand and Australian Land Company, Ltd.

(Lord Buckmaster.)

by express words nor by reference are the provisions of Section 17 made applicable.

Dealing with this Act alone it is my opinion that Section 17 can only be construed as referring to the special reliefs provided in the separate portions of the Acts in which it stands and were it intended to have had general application it would be found in the general clauses of the Act, as for example, in those which are grouped in Part X under the head "Miscellaneous", which, though chiefly dealing with matters of administration, yet in Section 209, as an illustration, specially make general provision with regard to the method of arriving at the amount of profits and gains.

So far, therefore, as the Act of 1918 is concerned, in my opinion, Section 17 does not apply to Section 55.

The matter, however, does not rest there. The Finance Act of 1920 provides by Section 64 that Part II of the Act, which includes Section 27, shall be construed together with the Income Tax Acts. This by itself carried the matter no further, for Section 27 only replaces Section 55 of the Act of 1918 and thus leaves the construction of Section 17 of that Act unaltered, but in its Third Schedule the Act of 1920 provides that the words of Section 17 shall be altered by substituting the words "allowance or deduction" for the words "exemption, abatement", and by Schedule IV repeals Sections 9 to 13, Sub-sections (1) and (2) of Section 14 and Section 15 of the Act of 1918. The Sections thus repealed cover the cases mentioned in Part III of the Act of 1918 as cases entitled to relief, and the argument is that in consequence Section 17, having no longer its proper foundation on which to rest must, as it is expressly preserved and amended, find a new foundation in Section 27 of the Act of 1920.

The simple answer to that proposition is that no new meaning has been conferred upon the words of the Section except so far, if at all, as the words "allowance or deduction" confer it, but these clearly relate to the new Sections in the Act of 1920 which take the place of those repealed in Part III and in these new Sections the words "allowance" and "deduction" are found throughout.

The argument of the Crown amounts to this. Be it granted that Section 17 of the Act of 1918 did not apply to the provisions of Section 55 of that Statute (Lord Justice Lawrence says this was expressly admitted by the Attorney-General), yet none the less it does apply to Section 27 of the Act of 1920 although the Sections to which it did have application before are replaced by corresponding Sections to which it can still refer. In other words, a privilege possessed by the subject in relation to taxation is to be taken away by some repealing and amending words in a Schedule and a general clause as to construing Acts together. I do not believe that any such argument has ever prevailed in construing a taxing statute and it certainly cannot prevail in the present case.

Viscount Dunedin.—My Lords, I concur and I will now read the judgment of my noble and learned friend Lord Warrington of Clyffe.

Lord Warrington of Clyffe (read by Viscount Dunedin).—My Lords, the Respondents are a Company incorporated in England under the Companies Acts with a share capital consisting of Preference and Ordinary shares and with a debenture debt of £2,500,000 of which both principal and interest are secured on the entire undertaking and assets of the Company.

Apart from dividends taxed by deduction and income charged to Income Tax under Schedule A, practically the whole of its income arises from trading operations in Australia and New Zealand. Dominion Income Tax has been paid in Australia and New Zealand in respect of such last-mentioned income.

The control of the Company is exercised in England and the same income has also been assessed to British Income Tax under Case I of Schedule D.

In paying interest to their debenture holders the Company have, as they were bound and entitled to do, deducted from such interest the amount of United Kingdom Income Tax at the full rate. The present case is not concerned with any claims by debenture holders, if any such there be, who have also paid Dominion Income Tax in respect of such interest.

In the year ending 5th April, 1917, and in each successive tax year down to and including that ending the 5th April, 1924, the Respondents have made a claim for relief in respect of the Dominion Income Tax so paid as above-mentioned under the statutory provisions from time to time in force, all of which were in practically the same form so far as this case is concerned. It will be enough to refer to the last enactment on the subject, viz. the Finance Act, 1920, Section 27 (1), which is as follows:—"If any person who "has paid, by deduction or otherwise, or is liable to pay, United "Kingdom income tax for any year of assessment on any part "of his income proves to the satisfaction of the Special Commis- "sioners that he has paid Dominion income tax for that year in "respect of the same part of his income, he shall be entitled to "relief from United Kingdom income tax paid or payable by him "on that part of his income at a rate thereon to be determined" as in the Act provided.

No question arises as to the rate and the only point at issue is whether the amount of relief is to be calculated on (*a*) the whole of the profits earned by them in the Dominions, or only on (*b*) the balance of such profits remaining after deducting therefrom the excess of the interest paid by it on its debentures over the amount of income arising in the United Kingdom. It is agreed that the debenture interest should be regarded as paid out of income arising in the United Kingdom so far as that will go.

(Lord Warrington of Clyffe.)

The Respondents insist on the principle referred to as (*a*), the Appellants on (*b*). The Commissioners adopted the view of the Respondents. They were required to state a Case which came before Mr. Justice Rowlatt. He set aside the assessment of the Commissioners, adopting the view of the Crown. The Court of Appeal (Master of the Rolls Lord Hanworth and Lords Justices Lawrence and Sankey) unanimously allowed the appeal and restored the assessment of the Commissioners. The Crown appeals to this House.

The Respondents' contention is a simple one. The Company is a person who has paid or is liable to pay United Kingdom Income Tax on part of his income, viz. in this case the trading profits earned in the Dominions and has also paid Dominion Income Tax on the same part of his income, and is therefore entitled to relief from United Kingdom Income Tax payable on that part of his income. Reading the words of the statute in their ordinary and natural meaning there is no answer to this contention. But the Crown says the words are not so to be read. The Respondents have deducted from the interest payable to the debenture-holders the United Kingdom tax in respect of that interest and it is said they have thus recovered a corresponding portion of the United Kingdom Income Tax paid or payable by them in respect of the profits from their Dominion trade and ought not therefore to be treated as having paid United Kingdom tax on the whole of such profits. Now this view obviously requires that the words of the Section be read in a sense other than their ordinary and natural meaning, as for example, "paid" must be read "paid and ultimately borne". I can find nothing in the other provisions of the Act to indicate that the ordinary construction would bring about a result not contemplated by the Legislature, and I therefore see no ground for the application of the principle of construction adopted in the well-known case of *Colquhoun* v. *Brooks* (1), 14 App. Cas. 493, in which the absence of machinery to give effect to the Act, if wide words were used in their ordinary and general meaning, was held to be sufficient to justify a more limited construction.

I agree, therefore, with the learned Judges of the Court of Appeal that the words of the Statute ought to be construed in the ordinary and natural sense and that the Respondents have made out a claim to relief calculated on the whole of the profits brought into charge in respect of which Dominion Income Tax has been paid. With all respect to Mr. Justice Rowlatt, I cannot adopt his view that income in this Section means only so much as exceeds the amount of the interest paid out of it. The Company pays tax on the whole of that part of its income which is also subject to Dominion Income Tax and none the less that on making a payment of interest payable out of its profits and gains it deducts, as it is entitled to do,

(1) 2 T.C. 490.

(Lord Warrington of Clyffe.)

the tax payable by the recipient. The Company is not accountable to the Revenue for this tax nor does its right to deduct it depend upon its having paid its own tax on its profits and gains (see Rule 19 of All Schedules Rules).

As to the minor point under Section 17, I agree with the views expressed by the Commissioners and the Court of Appeal and have nothing to add.

I think the appeal ought to be dismissed with costs.

Lord Thankerton.—My Lords, the Respondent Company is a company incorporated in England, but the main part of its income arises from trading profits earned in Australia and New Zealand. As the Company is controlled from England these trading profits are all assessed to United Kingdom Income Tax under Case I of Schedule D. Dominion Income Tax has also been paid on such profits arising in Australia and New Zealand.

The Respondent Company claims relief from United Kingdom Income Tax in respect of Dominion Income Tax for the eight financial years ending on 5th April in each year from 1917 to 1924 inclusive.

The Company has a large debenture issue, and in paying the debenture interest the Company has deducted, as they were entitled to do, the full rate of United Kingdom Income Tax. Parties are agreed as to the rate at which relief should be granted for the respective years, and that payment of the debenture interest should be treated as having been primarily met out of the Company's income arising in the United Kingdom, only the balance of such interest being treated as having been paid out of the overseas income. The only question is whether the Company in claiming relief is entitled to include that portion of the overseas profits, which is to be thus regarded as having been applied in payment of debenture interest.

As regards the first three years in question, the matter depends on construction of Section 43 of the Finance Act, 1916, as regards the fourth year on Section 55 of the Income Tax Act, 1918, and as regards the remaining four years on Section 27 of the Finance Act, 1920. As regards the last four years a subsidiary point is raised by the Crown, which is based on Section 17 of the Income Tax Act, 1918, as amended by the Finance Act, 1920.

The earlier statutory provisions are not materially different and the main question may be conveniently considered in relation to the terms of Sub-section (1) of Section 27 of the Finance Act, 1920, the material portion of which is as follows, "If any person who "has paid, by deduction or otherwise, or is liable to pay, United "Kingdom income tax for any year of assessment on any part of "his income proves to the satisfaction of the Special Commis- "sioners that he has paid Dominion income tax for that year in

(Lord Thankerton.)

"respect of the same part of his income, he shall be entitled to "relief from United Kingdom income tax paid or payable by "him on that part of his income at a rate thereon to be determined "as follows:— . . . ." Sub-section (8) (*b*) defines "United "Kingdom income tax" as meaning Income Tax chargeable in accordance with the provisions of the Income Tax Acts.

The Respondent Company paid the Dominion Income Tax on the whole of the overseas trading profits, including that part which was applied in payment of debenture interest, and has not recovered any part of that tax by deduction or otherwise from the debenture-holders.

Further, the Respondent Company has paid United Kingdom Income Tax, for which it alone was liable, on the whole of its profits.

The Crown maintains that the deduction by the Company of the appropriate amount of United Kingdom tax on payment of the debenture interest disables the Company from thereafter claiming that they have "paid" that amount of United Kingdom tax within the meaning of Section 27 (1) of the Act of 1920 or that the profits so far as applied in payment of debenture interest are part of their "income" within the meaning of that Section.

The Special Commissioners decided in favour of the Respondents, Mr. Justice Rowlatt in favour of the Crown, and the Court of Appeal in favour of the Respondents. I agree with the decision of the Court of Appeal. In my opinion the natural meaning of the language used is in favour of the Respondents' contention. In accordance with the provisions of the Income Tax Acts the whole of the Company's profits, whether applied in whole or in part in payment of debenture interest, or not so applied at all, forms their income for the purpose of assessment and charge under Schedule D and, in my opinion, the fact that they are entitled, though not bound, to recover the appropriate proportion by deduction on payment of the interest cannot be held to alter the position. The Company are entitled to make that deduction whether they have paid their Income Tax or not; and are under no liability to account to the Crown for it. The contention of the Crown involves construing "paid" to mean "paid and ultimately borne", a construction for which I see neither necessity nor warrant.

On the subsidiary point raised by the Crown under Section 17 of the Income Tax Act, 1918, I agree with the reasons of the Court of Appeal for its rejection.

I concur in the motion proposed.

Lord Macmillan.—My Lords, the Respondent Company has in fact in each of the eight years in question paid United Kingdom Income Tax on the whole of its profits wherever arising at the full rate chargeable in each of these years. On the part of these profits

(Lord Macmillan.)

which arose in Australia and New Zealand the Company has also in each year paid the Dominion Income Tax chargeable. As regards this part of its total profits the Company has thus paid both United Kingdom Income Tax and Dominion Income Tax. On this statement the case would appear to fit precisely the language of Section 43 of the Finance Act, 1916, Section 55 of the Income Tax Act, 1918, and Section 27 of the Finance Act, 1920, so as to entitle the Company to the relief thereby provided. I observe that when Section 43 of the Act of 1916 was under consideration in this House in the case of the *Scottish Union and National Insurance Company* v. *New Zealand and Australian Land Company, Limited* [1921] 1 A.C. 172, Viscount Finlay, after quoting the statutory prerequisites of relief, said(1):—"It is the company, and the company alone, who fulfil "this requirement . . . . it has paid the Colonial taxes and the "United Kingdom income tax, and it is the only person entitled "to claim and to receive from the Commissioners the repayment "provided for by S. 43." In that case, however, the right of the company to relief was not in issue and the only question was whether the company, having had the benefit of relief under Section 43 of the Act of 1916, ought, when paying dividends to its preference shareholders, to deduct tax at the full United Kingdom rate or at a rate diminished to the extent of the relief received. The decision was that tax was deductible at the full United Kingdom rate.

In the present case no question would have arisen as to the Respondent Company's right to relief but for the circumstance that it happens to have issued debentures and debenture stock. In paying interest to the debenture-holders the Company has properly deducted Income Tax at the full rate current in the United Kingdom and not at the rate at which its profits would actually bear United Kingdom Income Tax if the statutory relief were accorded and taken into account. So far as the debenture interest has been or is deemed to have been paid out of profits arising in the United Kingdom which have borne full United Kingdom Income Tax and in respect of which there is of course no claim for relief, no question arises. But in so far as the debenture interest has been paid out of profits arising in the Dominions it has been paid out of a fund which if the relief claimed is accorded will have borne less than the full United Kingdom Income Tax. The Company having deducted tax at the full United Kingdom rate when paying its debenture interest will consequently benefit to the extent of the difference which it retains.

The Crown contends that this is not right and that before any relief from United Kingdom Income Tax is accorded in respect of the profits arising in the Dominions there should be deducted the amount of the debenture interest paid out of these profits.

(1) [1921] A.C. at pp. 181 and 182.

(Lord Macmillan.)

This contention was supported by an argument to the effect that in all cases of relief under the Income Tax code income is reckoned net after deduction of all charges. The Crown further maintained that the Company had not in fact borne the United Kingdom Income Tax on its Dominion profits applied in paying the debenture interest because it had recouped itself by deducting tax at the full United Kingdom rate when paying that interest, and that the Company was consequently not entitled to relief in respect of that part of its income, the persons who had really paid the United Kingdom Income Tax being the recipients of the debenture interest who had paid it by deduction.

To sustain the Respondent Company's claim may be to produce a result which can be represented as anomalous, but in my opinion the justification of its claim follows inevitably from the combined effect of the statutory scheme of relief and the syatem of deduction at the source under Rule 19 of the General Rules applicable to all Schedules.

There can be no question that the Company has paid full United Kingdom Income Tax on the whole of its income, including the portion derived from the Dominions and applied in paying its debenture interest. No deduction from assessment has been made in respect of its debenture interest and none could properly be made. The amount of the debenture interest is not deductible for the purpose of ascertaining the net assessable income of the Company. It is true that the Company will not have borne full United Kingdom Income Tax on the portion of its income derived from the Dominions and applied in paying its debenture interest if the relief claimed is accorded. But the right to deduct Income Tax at the full United Kingdom rate when paying its debenture interest is plainly conferred on the Company by Rule 19, for the condition is that the interest shall be "payable wholly out of profits or gains brought into charge to tax" and the whole profits of the company have been brought into charge to tax. Actual payment, not ultimate incidence, is the criterion both of the right of relief and of the right to deduct.

Since the decision in the case of the *Scottish Union and National Insurance Company* v. *New Zealand and Australian Land Company*, *cit. sup.*, the Legislature has attempted a reconciliation of the right of relief and the right to deduct by enacting in the Finance Act, 1920, Section 27 (5), as regards the payment of dividends that "Where "under Rule 20 of the General Rules applicable to Schedules A, B, C, "D and E, a body of persons is entitled to deduct income tax from "any dividends, tax shall not in any case be deducted at a rate "exceeding the rate of the United Kingdom income tax as reduced "by any relief from that tax given under this section in respect "of any payment of Dominion income tax." I am not sure that the effect of this enactment could not be shown to be as anomalous

(Lord Macmillan.)

as the present claim is said to be, but at any rate no similar provision is made for the case of payment of interest on debentures, and the right to deduct the full United Kingdom Income Tax remains where debenture interest is paid out of profits or gains brought into charge to tax.

But does the Respondent Company's present claim, if upheld, really result in an anomaly? It is true that if it is granted the Company will have paid its debenture interest out of a fund which will have contributed to the United Kingdom revenue less than the full rate of United Kingdom tax, but it will have paid it out of a fund which has borne in the shape of combined United Kingdom and Dominion Income Tax at least the equivalent of the full United Kingdom tax. I rather think that this practical result is just the necessary consequence of the scheme of relief, and it does not seem inherently unjust. No part of the Respondent Company's income will in the end have escaped without paying and bearing tax at least on the scale of the full United Kingdom Income Tax, although the United Kingdom revenue will only receive a share of that total tax

On the other hand, the contention of the Crown involves a discrimination in the matter of relief between companies which have and companies which have not made a debenture issue. I do not find any justification in the relevant legislation for such a discrimination. Further, the contention that the recipient of the debenture interest and not the Company has paid the United Kingdom Income Tax within the statutory meaning would preclude the operation of any relief, for if the Company has not paid United Kingdom Income Tax it can have no claim to relief while the recipient of the debenture interest who in the ordinary case will have paid no Dominion Income Tax will equally have no claim to relief. The result would be that no relief would be accorded in respect of moneys which had in fact borne both United Kingdom and Dominion Income Tax, and the intention of the Legislature would be defeated.

As regards the separate but important point raised on Section 17 of the Income Tax Act, 1918, in relation to the last four years in question, I am satisfied, as was the Court of Appeal, that it is adequately met by the reasoning of the Commissioners.

I am therefore of opinion on the grounds which I have indicated that the appeal should be dismissed.

Questions put:

That the Order appealed from be reversed.

The Not Contents have it.

That this appeal be dismissed with costs.

The Contents have it.

[Solicitors:—The Solicitor of Inland Revenue; Messrs. Bircham and Co.]

OPINION.

UNITED STATES BOARD OF TAX APPEALS.

DOCKET No. 62025, 75742, 75812, 75849, 75852.

(Promulgated September 30, 1935.)

Mary Duke Biddle,
Petitioner,
v.
Commissioner of Internal Revenue,
Respondent.

George W. Elkins,
Petitioner.
v.
Commissioner of Internal Revenue,
Respondent.

Leslie H. Reed,
Petitioner.
v.
Commissioner of Internal Revenue,
Respondent.

State-Planters Bank and Trust Company, Administrator D. B. N. C. T. A., Estate of Marie Cooke Hickey, Deceased,
Petitioner,
v.
Commissioner of Internal Revenue,
Respondent.

State-Planters Bank and Trust Company, Executor, Estate of James J. Hickey, Deceased,
Petitioner,

v.

Commissioner of Internal Revenue,
Respondent.

A citizen of the United States receiving dividends from a corporation chartered under the laws of the United Kingdom of Great Britain and Ireland is not entitled under section 131 of the Revenue Act of 1928 to a credit of the amount of United Kingdom income taxes "appropriate" to the dividends received, nor is such taxpayer required to include in gross income as a part of the dividends received from foreign corporations the amount of United Kingdom income tax "appropriate" to the dividends.

Forrest Hyde, Esq., F. J. Daniels, Esq., W. R. Spofford, Esq., and *R. E. Cabell, Esq.,* for the petitioners.
Dean P. Kimball, Esq., and *H. B. Linton, Esq.,* for the respondent.
Albert L. Hopkins, Esq., as amicus curiæ.

SMITH: These cases, consolidated for hearing, involve deficiencies in income tax for the years and in the amounts as follows:

Petitioner	Docket No.	Year	Deficiency
Mary Duke Biddle	62025	1929	$189,222 25
George W. Elkins	75742	1931	4,259 94
Leslie H. Reed	75812	1931	15,667 97
State-Planters Bank and Trust Co., Administrator	75849	1931	145 00
State-Planters Bank and Trust Co., Executor ..	75852	1931	3,562 70

The issues raised by the pleadings in the case of Mary Duke Biddle, Docket No. 62025, were settled by the parties prior to the hearing, except as noted below, and were disposed of by stipulation of counsel filed at the hearing as a part of the record in these proceedings. In the deficiency notice issued to Mary Duke Biddle a portion of the amount of United Kingdom income tax "appropriate" to the dividends received by her from United Kingdom corporations was allowed by the respondent as a credit against her income tax due the United States and the balance not available as a credit was allowed as a deduction. The respondent now alleges error in allowing such credit. The stipulation entered into by the parties in the determination of the tax liability for 1929 provides:

(3) That there be reserved for determination by the United States Board of Tax Appeals the question of whether (1) all or any portion of the sum of $47,380.27, alleged to have been paid by Petitioner as income taxes to Great Britain, should be allowed as a credit on Federal Income Taxes and the balance thereof deducted from gross income, or (2) the whole of said amount should be excluded from gross income.

In all of the other cases the respondent has disallowed the petitioners' claims for credit against Federal income taxes of United Kingdom income taxes "appropriate" to the dividends received.

At the hearing of these proceedings counsel for the respondent conceded that the amounts of surtaxes (additional income taxes) paid by the petitioners directly to the Crown were proper credits against the income taxes due the United States and that the disallowance of such credits was improper.

The same question is presented in each case, namely, whether under section 131 of the Revenue Act of 1928 all or any portion of the amounts of United

Kingdom income tax "appropriate" to the dividends paid to the petitioners by the United Kingdom corporations should be allowed as a credit against Federal income taxes and the balance thereof not available as a credit deducted from gross income under section 23 (c) of the Revenue Act of 1928, as contended by the petitioners, or the whole of said amount of tax "appropriate" to said dividends should be excluded from gross income, as contended by the respondent.

The evidence before the Board in these proceedings consists of an agreed statement of facts in each case, certain documentary evidence, and the testimony of Frank Heyworth Talbot, barrister, of London, England, an authority on British income tax law, who was introduced by the petitioners.

The agreed stipulation of facts in each case is adopted as a part of our findings by reference.

During the taxable years all the petitioners were citizens and residents of the United States and were owners of shares of stock in corporations organized under the laws of Great Britain and Ireland. During the years involved those corporations declared and paid dividends on their shares of stock. The Tobacco Securities Trust Co., Ltd., declared its dividends, so far as the record shows, less British or United Kingdom income taxes. Although the dividend declarations are not in evidence, it appears that the dividends were declared in gross amount, from which were deducted United Kingdom income taxes "appropriate" thereto, and checks for the balance were sent to the stockholders. The British-American Tobacco Co., Ltd., and Imperial Tobacco Co. of Great Britain and Ireland declared their dividends "free of income tax." A dividend declared by a United Kingdom corporation "free of income tax" is in substance and effect a dividend of such gross amount as after the deduction

of income tax at the rate "appropriate" thereto amounts to the net sum actually paid to the stockholder. All of the dividend checks transmitted by the respective companies to their stockholders were accompanied by statements which indicated on their face the amount of United Kingdom income tax "appropriate" to the dividend paid to each stockholder.

All of the petitioners kept their books of account and made their income tax returns upon the cash receipts and disbursements basis. Petitioners reported in their respective returns as "dividends from foreign corporations" the amounts actually received from dividend-paying corporations plus the amounts of United Kingdom income taxes "appropriate" thereto. Thereafter an income tax was calculated on net income before taking any credit or deduction for foreign taxes paid. The amount of the credit was then computed by applying the ratio which the foreign net income bore to the total net income to the provisional tax in order to determine the portion of foreign taxes allowable as a credit. After ascertaining the proper credit for foreign taxes, Federal net income was finally computed by deducting from gross income the balance of foreign taxes not allowable as a credit. Petitioners claimed the credit as determined aforesaid against Federal income tax and in support of their claims filed certain documents received from the dividend-paying corporations. The respondent has disallowed the credits claimed (except as indicated above in the case of Mary Duke Biddle) in the determination of the deficiencies.

Income taxes have been continuously in force in the United Kingdom of Great Britain and Ireland since 1842. In 1918 various acts and amendments thereto then in force were consolidated in the Income Tax Act of 1918. The Act of 1918 is continued in force from year to year by the annual finance acts. Some of the

provisions of these finance acts have modified the basic Income Tax Act of 1918.

In general the English income tax acts are based upon the principle of collection of tax at the source. The income tax is imposed at a standard rate. The person or corporation paying certain determinable income is required to pay over to the Crown income tax at the standard rate and the balance is paid to the one entitled to receive the income. Thus, a lessee pays to the Crown income tax at the standard rate upon the rental to be paid by him and only the balance is paid over to the landlord; a corporation paying interest upon its bonds likewise deducts from the interest payable to the bondholder income tax at the standard rate which it pays to the Crown and only the balance is paid over to the bondholder.

Rule 1 of the General Rules made a part of the Income Tax Act of 1918 applicable to schedule D provides that tax under that schedule (which is a tax upon a particular type of income, including among other things the profits of a business) shall be levied and paid by the individuals or bodies of persons receiving or entitled to receive the income which is the subject matter of the tax under that schedule.

Section 237 of the act defines a "body of persons" to mean "any body politic, corporate, or collegiate, and any company, fraternity, fellowship and society of persons, whether corporate or not corporate." The various types and kinds of income that are taxed are enumerated in schedules A to E, inclusive, of the first schedule of the 1918 Act. Section 1 of part (1) of the act provides that when any finance act levies income tax for any year at any rate the income which is so taxed shall be that which is described in schedules A to E, inclusive.

Rule 20 of the General Rules applicable to schedules A to E provides as follows:

The profits or gains to be charged on any body of persons shall be computed in accordance with the provisions of this Act on the full amount of the same before any dividend thereof is made in respect of any share, right or title thereto, and the body of persons paying such dividends shall be entitled to deduct the tax appropriate thereto.

A United Kingdom corporation pays income tax upon its gains and profits whether a dividend is paid within the taxable year or not. The balance of the profits not taken as a tax may be added to the corporation's surplus, utilized for betterments or improvements, or paid out in dividends. The undistributed profits of one year may be distributed in a subsequent year. The standard rate of tax in the subsequent year may be different from the standard rate in effect when the profits were earned by the corporation. The British income tax acts provide that wherever a dividend is paid the recipient thereof shall be advised of the rate and amount of tax "appropriate" to the dividend. Such rate is that which is in effect at the time the dividend is paid. The stockholder receiving the dividend is regarded by the English income tax acts as having paid "by deduction or otherwise" the tax "appropriate" to the dividend. The stockholder is not required to pay any income tax at the standard rate upon the amount of cash distributed to him by the corporation. He may, however, be subject to a surtax, and in making his surtax return the stockholder is required to include in his gross income not only the amount of the distribution received from the corporation but that amount plus the tax "appropriate" thereto. On the other hand, the stockholder receiving the dividend may not, by reason of exemptions and relief provisions of the income tax acts, be required to pay the full amount of the tax represented by the tax "appropriate" to the dividend. In such case the stockholder is

entitled to file a claim for refund with the English authorities and upon the proof of claim is entitled to recover a part or all of the tax "appropriate" to the dividend.

The British income tax acts in force in the taxable years further provide that the corporation in paying the dividend may deduct from the dividend the tax "appropriate" thereto. Thus, where the earnings of a corporation in a given year amount to £1,000 and the standard rate of income tax is 25 percent, the corporation pays to the Crown a tax of £250 and has left £750 to distribute to its stockholders. It may declare a dividend in the gross amount of £1,000 "less income tax", in which event the stockholders receive £750. On the other hand, it may declare a dividend "free of income tax", in which event the dividend is declared in the amount of £750 and the stockholders receive £750. In either case the stockholders are regarded as having paid an aggregate income tax of £250 in respect of the dividends received by them. This is by virtue of section 32, subsection (2) of the British Income Tax Act of 1918, which provides in part as follows: "If any such person is charged to tax under any Schedule and has paid that tax, or *has paid* or *has been charged with tax by deduction or otherwise,* he shall, on a claim being made to the special commissioners, and on production . . ." be entitled to relief. (Italics supplied.)

The petitioners' expert witness, Talbot, stated unequivocally that under the English income tax acts and in their administration a stockholder receiving a dividend from a corporation is regarded as having paid the amount of tax "appropriate" to the dividend.

The question before us in these proceedings is, first, whether under the Federal income tax acts the petitioners are required to include in their gross income not only the amounts actually received by them as dividends from United Kingdom corporations, but in addition

thereto the amount of tax "appropriate" to those dividends which the United Kingdom income tax acts regard as having been paid by the stockholders, and, secondly, whether the petitioners are entitled to a credit against their Federal income taxes of any portion of the amounts "appropriate" to the dividends received by them from United Kingdom corporations.

Ordinarily a taxpayer on a cash receipts and disbursements basis is required to include in gross income only the cash or value of property which comes into his ownership or control. The requirement of the statute that persons keeping their books of account and making their returns on a cash receipts and disbursements basis must be construed according to its usual acceptation. *Avery v. Commissioner,* 292 U. S. 210.

Section 22 (a) of the Revenue Act of 1928 provides that "gross income" includes "gains, profits, and income derived from . . . dividends."

Section 115 of the same act defines a "dividend" to mean "any distribution made by a corporation to its shareholders, whether in money or in other property, out of its earnings or profits accumulated after February 28, 1913."

Regardless of any provision of the United Kingdom income tax acts or any practice thereunder, we think it clear that the only amounts distributed by a United Kingdom corporation within the meaning of section 115 are the amounts of money paid over to and received by the stockholders. If, in truth, the stockholder owed United Kingdom income tax at the standard rate in respect of the dividend received, it might be argued that the word "distributed" as used in section 112 had application not only to the amount of cash paid to the stockholder but the amount of his liability in respect of the dividend paid by the corporation from which he received the dividend. But, as shown below, a stockholder has no liability for income tax at the standard rate upon dividends received by him.

We are furthermore of the opinion that the amount of income derived by any one of the petitioners from the United Kingdom corporations was the amount of cash actually received by them. This we think follows from *Avery v. Commissioner, supra.* We, therefore, are of the opinion that the respondent did not err in excluding from the petitioners' gross incomes the amounts of tax "appropriate" to the dividends under the provisions of the English income tax acts.

The second question, which we think is dependent upon the first, is as to whether the petitioners are entitled, under section 131 of the Revenue Act of 1928, to credits against their Federal income taxes of the amounts of United Kingdom income tax "appropriate" to the dividends. Section 131 of the Revenue Act of 1928 provides as follows:

SEC. 131. TAXES OF FOREIGN COUNTRIES AND POSSESSIONS OF UNITED STATES.

(a) *Allowance of credit.*—The tax imposed by this title shall be credited with:

(1) CITIZEN AND DOMESTIC CORPORATION.—In the case of a citizen of the United States and of a domestic corporation, the amount of any income, war-profits, and excess-profits taxes paid or accrued during the taxable year to any foreign country or to any possession of the United States; and

. . . . . .

(b) *Limit on credit.*—In no case shall the amount of credit taken under this section exceed the same proportion of the tax (computed on the basis of the taxpayer's net income without the deduction of any income, war-profits, or excess-profits tax any part of which may be allowed to him as a credit by this section), against which such credit is taken, which the taxpayer's net income (computed without the deduction of any such income, war-profits, or excess-profits tax) from sources without the United States bears to his entire net income (computed without such deduction) for the same taxable year.

In *Welch v. St. Helens Petroleum Co., Ltd.*, 78 Fed. (2d) 631, it was held that under section 234 of the Revenue Act of 1921 a foreign corporation with income from sources within the United States is entitled to deduct any income tax paid to Great Britain even though it is entitled to deduct such foreign taxes under the laws of Great Britain from the dividends paid its stockholders. In other words, the court held that the income tax paid by a United Kingdom corporation to the Crown was an income tax for which it alone was liable; that it did not pay the tax as agent for the stockholders; and that its right to reimbursement afforded by the United Kingdom income tax acts did not prevent it from deducting from gross income in determining the amount of the Federal income tax the full amount of the tax paid to the Crown. Although that case did not cover income taxes due the United States for the years 1929 and 1931, we have been unable to find any provision of the United Kingdom income tax acts or Federal income tax acts that would show the inapplicability of that ruling to the tax years before us.

The petitioners' witness, Talbot, made no contention that the income tax paid by the United Kingdom corporation was paid as agent for its stockholders. The decisions of the British courts are to the contrary.

In *Welch v. St. Helens Petroleum Co., Ltd., supra*, the Circuit Court of Appeals for the Ninth Circuit stated:

> In a recent tax case before the House of Lords, *Neumann v. Commissioners of Inland Revenue*, (K. B.) 49 T. L. R. 1, (C. A. 1933) 1 K. B. 728, and (H. L. 1934) (A. C. 215) the relation of the stockholder to a tax paid by a corporation and subsequently deducted from a dividend paid to him was considered. In discussing the case Lord Wright said:
>
> > The shareholder and the company are no doubt separate entities; the company is not an agent for

the shareholder to pay tax on the dividend, nor is the company the collector for the Revenue to deduct the tax from the dividend. The company is the taxpayer. The shareholder has no right to any share in the profits till a dividend is declared; the company may use the profits in any way it pleases vis-a-vis any shareholder; it may put them to reserve or capitalize them or use them for extensions or improvements; the profits declared and paid as dividends in one year may have been made in previous years when the standard rate of tax was different; it is only very rarely and in exceptional cases that dividends are paid out of any particular source of profit; usually they are paid out of the general revenue fund of the company. What is essential to the requirements of the Inland Revenue is that all the profits of the company should be taxed and if that is done the Revenue is not concerned with what is done with these profits. The company is not bound but only authorized to deduct tax in paying dividends; whether it deducts or not is left to its discretion because the profits once having been taxed in the company's hands, do not bear further tax (apart from surtax) in the shareholder's hands. There is in fact only one profit, no new profit being created from the fact that the shareholder gets his share; the tax is a tax on the profits and not on the dividend. But if tax is deducted from the dividend the Acts have provided that it is to be at the standard rate of tax of the year of the dividend, in order to avoid obvious difficulties which might arise because profits divided in one year may have been earned in other years.

Lord Tomlin, in the same case, states: "Now I may say at once that, having regard to the view which I have expressed as to the general scheme and operation of the Income Tax Acts in regard to dividends, I am unable to accept the view that dividends as such are taxable under Sch. D. I do not think they are. I think it is accurate to say as Rowlatt, J. said in *Purdie*

v. The King (1): 'There is, strictly speaking, no tax upon dividends at all.' They are, however, under r. 20 of the General Rules and s. 39 of the Finance Act, 1927, and apart altogether from s. 7 of the Finance Act, 1931, liable, where the dividends are made out of profits or gains charged on the Company, to suffer deduction of a sum equal to tax at the standard rate on the gross amount of the dividends, and in such cases the gross amount of the dividend is the income tax income to be taken into account whether it be for computing the amount of tax which the shareholder is entitled to have returned or for fixing his liability to surtax." The order proposed by Lord Tomlin, concurred in by Lord Wright and Lord Warrington of Clyffe, was adopted by the House of Lords.

The above cited case in our opinion is authority for the statement that the United Kingdom income tax acts impose no tax upon the payment of a dividend; that the stockholder has no liability to United Kingdom income tax at the standard rate in respect of the dividend received by him. It can not therefore be said that when a United Kingdom corporation pays income tax to the Crown it pays a tax for the stockholder or discharges any obligation resting on the stockholder. In making the payment the corporation simply discharges its obligation to pay United Kingdom income tax.

The action of the respondent in denying credit to the petitioners of any amount representing United Kingdom income tax "appropriate" to the dividends received by them is approved.

In *Basil Robillard, Executor,* 20 B. T. A. 685, we said:

On final determination under Rule 50, petitioner should be allowed credit against the tax of income taxes paid to the British Government by the Spirella Co. of Great Britain on dividends disbursed direct to

petitioner's decedent, as a stockholder in the Spirella Co. of Great Britain, and as a life tenant of the stock owned by the estate of her deceased husband, Marcus M. Beeman.

This can not be taken as the opinion of this Board that a citizen of the United States, a stockholder of a United Kingdom corporation, is entitled to a credit of United Kingdom income tax "appropriate" to the dividend received. The ruling made by the Board in the above cited case was merely for the purpose of carrying into effect a stipulation of the parties litigant in that case.

Reviewed by the Board.

Judgment will be entered under Rule 50.

DECISION.

(Entered November 30, 1935.)

Pursuant to the Board's opinion in the above-entitled proceeding promulgated September 30, 1935, the respondent herein filed a notice of settlement and recomputation of tax on November 5, 1935, and the petitioner filed an acquiescence thereto on November 23, 1935. Wherefore, it is—

ORDERED and DECIDED that there is a deficiency in income tax due from the petitioner for the year 1931 in the amount of $2442.52.

(Sgd.) CHARLES P. SMITH.
Member.

PETITION FOR REVIEW OF DECISION OF UNITED STATES BOARD OF TAX APPEALS.

(Filed February 25, 1936.)

To the Honorable the Judges of the United States Circuit Court of Appeals for the Third Circuit:

Your petitioner on review, George W. Elkins, by his attorney, William R. Spofford, in support of this his petition filed in pursuance of Section 1001 of the Act of Congress approved February 26, 1926, entitled "The Revenue Act of 1926" as amended by Section 1101 of the Revenue Act of 1932, for review of the decision of the United States Board of Tax Appeals rendered on November 30, 1935, redetermining a deficiency in income tax for the calendar year 1931 in the amount of $2442.52, respectfully shows:

Your petitioner on review is a citizen of the United States residing at Elkins Park, Pennsylvania, and having an office at 419 York Road, Jenkintown, Pennsylvania.

The respondent on review is the duly appointed, qualified and acting Commissioner of Internal Revenue of the United States, holding his office by virtue of the laws of the United States.

STATEMENT OF THE NATURE OF THE CONTROVERSY.

1. The Commissioner of Internal Revenue determined a deficiency in income tax for the calendar year 1931 in the amount of $4259.94, and on March 3, 1934, in accordance with Section 272 of the Revenue Act of 1928, mailed a notice of said deficiency to the petitioner. On April 24, 1934, petitioner filed with the United States Board of Tax Appeals his petition for a redetermination of the deficiency in income tax determined by

the Commissioner. Thereafter, in due course, the Commissioner filed his answer to the petition. On November 12 and 13, 1934, the cause duly came on for hearing before the United States Board of Tax Appeals, at which time the case was submitted upon a stipulation of facts agreed to by counsel for both parties. Petitioner offered documentary evidence and oral testimony of Frank Heyworth Talbot, barrister at law, of London, England, who qualified as an expert on the laws of Great Britain. Respondent offered documentary evidence.

2. The question for determination by the United States Board of Tax Appeals was whether, under Section 131 of the Revenue Act of 1928, all or any portion of the amounts deducted from dividends paid to petitioner by British corporations as United Kingdom income taxes appropriate to such dividends should be allowed as a credit on Federal income taxes, and the balance thereof not available as a credit deducted from gross income under Section 23 (c) of said act; or the whole of said amount so deducted from petitioner's dividends should be excluded from gross income. One other issue, involving the allowance of credit for surtax (additional United Kingdom income tax) paid by petitioner, was before the Board, but, as set forth in the next paragraph, respondent conceded error thereon at the hearing.

3. Throughout the calendar year 1931 the petitioner owned shares of stock in corporations organized and existing under the laws of Great Britain, as follows:

10,617 Ordinary shares of stock, par value one pound each, of the British-American Tobacco Company, Limited;

1,327 Ordinary shares of stock, par value one pound each, of Tobacco Securities Trust Company, Limited;

1,327 shares of Deferred stock, par value five shillings each, of Tobacco Securities Trust Company, Limited; and

9,500 Ordinary shares of stock, par value one pound each, of The Imperial Tobacco Company (of Great Britain and Ireland), Limited.

During the year involved the corporations declared and paid to petitioner dividends on these shares, deducting from each of such dividends a certain amount as United Kingdom income taxes at the "standard rate" (fixed rate analogous to Federal "normal" tax) appropriate to each dividend and paying to petitioner the net amount remaining. The aggregate amounts involved are as follows:

	Net Amount Received in Cash	Amount Deducted as British Income Tax by Corporation	Gross Amount of Dividends
British-American Tobacco Company, Ltd.	$12,338.25	$3,743.98	$16,082.23
Tobacco Securities Trust Company, Ltd.	817.03	201.27	1,018.30
The Imperial Tobacco Company (of Great Britain and Ireland), Ltd.	10,838.44	3,071.86	13,910.30
	$23,993.72	$7,017.11	$31,010.83

In addition to paying United Kingdom income taxes by way of deduction from dividends, petitioner filed an income tax return for surtax (additional income tax) due to the United Kingdom on his British dividends. He was required by British law and did include not only the net amount of cash actually received but also the amount of tax at the "standard rate" deducted

by the corporations; that is, he reported the gross amount of dividends. Thereafter, in accordance with the assessment made by the Special Commissioners of Income Tax, he paid surtax directly to the British Inland Revenue Department amounting to $2189.91 at the then current rate of exchange. Respondent disallowed petitioner's claim for credit on account of surtax paid, but, at the hearing, conceded error, allowing credit for such amount.

Petitioner keeps his books and returns his income for income tax purposes on the cash receipts and disbursements basis. In his Federal income tax return for the year involved he reported as "Dividends From Foreign Corporations" the amounts actually received in cash from the dividend-paying corporations plus the amounts deducted by those corporations as United Kingdom income taxes appropriate to such dividends, thus ascertaining the gross foreign dividends declared and paid. Thereafter a provisional Federal income tax was calculated upon net income before taking any credit or deduction for foreign taxes paid. The amount of the credit was then computed by applying the ratio of foreign income to total net income to the provisional tax in order to determine the portion of foreign taxes allowable as a credit. After ascertaining the proper credit for foreign taxes, Federal net income was finally computed by deducting from provisional net income the balance of foreign taxes not allowable as a credit (Sections 131 and 23, Revenue Act of 1928). Petitioner claimed the credit determined as above set forth against his Federal income tax for the year 1931 on Form 1116, filing therewith and in support thereof certain documents, the form of which in the past had been regarded by the respondent as satisfactory evidence for the allowance of the credit claimed. The claim for credit under Section 131 amounted to $5044.99, and the deduc-

tion under Section 23 for the balance not allowable as a credit amounted to $4162.03.

4. Respondent disallowed the entire amount of $5044.99 as a credit on account of foreign income taxes, and excluded it from gross income. That is, no credit whatever was allowed with respect to either the United Kingdom tax deducted from the dividends by the corporations or the surtax paid by petitioner, but both amounts were excluded from gross income. At the hearing before the United States Board of Tax Appeals, as above noted, respondent conceded that credit should be allowed with respect to the surtax paid by petitioner. The Board approved the Commissioner's action in disallowing any credit for United Kingdom income taxes deducted by the dividend-paying corporations in an opinion promulgated September 30, 1935, and entered its decision and final order of determination on November 30, 1935, approving a deficiency in the amount of $2442.52.

DESIGNATION OF COURT OF REVIEW.

Your petitioner, a citizen of the United States, residing at Elkins Park, Pennsylvania, and having an office at 419 York Road, Jenkintown, Pennsylvania, duly filed his income tax return for the calendar year 1931 with the Collector of Internal Revenue for the First District of Pennsylvania at Philadelphia, Pa. Petitioner, being aggrieved by the opinion, decision and order of the United States Board of Tax Appeals, desires a review thereof by the United States Circuit Court of Appeals for the Third Circuit, pursuant to the provisions of Section 1002 (a) of the Act of Congress approved February 26, 1926, as amended.

ASSIGNMENTS OF ERROR.

Your petitioner, as the basis for review, makes the following assignments of error:

1. The Board of Tax Appeals erred in holding that petitioner was not entitled under Section 131 of the Revenue Act of 1928 to a credit against Federal income taxes for any portion of the United Kingdom income taxes appropriate to and deducted by British corporations from dividends paid to petitioner.

2. The Board of Tax Appeals erred in failing to find as a fact that under the law of Great Britain a shareholder in a British corporation, from whose dividends the corporation has deducted amounts as United Kingdom income tax appropriate to the dividends, pays income tax or is a taxpayer with respect to the amounts so deducted.

3. The Board of Tax Appeals erred in finding that petitioner did not pay British income tax, although no question was raised as to the credibility or outstanding qualifications of the British barrister who was the sole expert witness and whose positive, uncontradicted and unequivocal testimony as to the law of, and administrative practice in, Great Britain was that a stockholder receiving a dividend from a British corporation is a taxpayer with respect to the amount of tax deducted from the dividend by the corporation.

4. The finding of the Board of Tax Appeals that United Kingdom income tax acts impose no tax upon the payment of a dividend, and that a stockholder has no liability to United Kingdom income tax at the standard rate in respect of the dividend received by him is unsupported by any evidence.

5. The Board of Tax Appeals, as the Court at the forum, erred in not holding that the interpretation and construction placed upon British income tax statutes by the British Legislature, British courts and the Department of Inland Revenue of Great Britain are conclusive

in determining that petitioner has paid an income tax to a foreign country.

6. The Board of Tax Appeals erred in holding that only the net amount received in cash by the petitioner from British corporations could be considered as gross income for Federal income tax purposes thus disregarding the provisions of the United Kingdom income tax acts and the practice thereunder with respect to the payment of dividends and deduction of income tax therefrom.

7. The Board of Tax Appeals erred in disregarding the respondent's settled practice of over fifteen years' standing which permitted the allowance of petitioner's claim for credit and in disregarding respondent's published rulings interpreting the credit provisions of the Revenue Acts of 1918 and 1921 (these acts contain credit provisions similar in all substantial respects to those contained in the Revenue Act of 1928), which rulings have not been modified, amended or revoked and have received Congressional approval in the re-enactment of the credit provisions in all subsequent revenue acts without change.

8. The decision of the Board of Tax Appeals is contrary to and not supported by the evidence.

9. The Board of Tax Appeals erred in rendering its decision for respondent and entering its order based thereon.

WHEREFORE, your petitioner prays that the United States Circuit Court of Appeals for the Third Circuit may review the findings, decision, opinion and order of the United States Board of Tax Appeals and reverse and set aside said decision and order, and enter an order directing the Board of Tax Appeals to enter

judgment for petitioner, and your petitioner will ever pray.

WM. R. SPOFFORD,
Attorney for Petitioner on Review,
1035 Land Title Building,
Philadelphia, Pa.

COMMONWEALTH OF PENNSYLVANIA,
COUNTY OF PHILADELPHIA, } *ss.:*

WILLIAM R. SPOFFORD, being duly sworn according to law, deposes and says that he is one of the attorneys for the petitioner herein; that he is duly authorized to verify the foregoing petition for review to the United States Circuit Court of Appeals for the Third Circuit; that he has read the said petition for review and is familiar with the statements contained therein; that the facts stated therein are true, except such facts as may be stated upon information and belief, and those facts he believes to be true.

WM. R. SPOFFORD.

Sworn to and subscribed before me this twenty-first day of February, 1936.

MARGARET L. MCHUGH,
(Seal) *Notary Public.*
My commission expires January 14, 1937.

STATEMENT OF EVIDENCE.

(Filed June 11, 1936.)

UNITED STATES BOARD OF TAX APPEALS.

DOCKET No. 75742.

George W. Elkins,
Petitioner on Review,
v.
Guy T. Helvering, Commissioner of Internal Revenue,
Respondent on Review.

The above-entitled case came on for hearing before the Honorable Charles P. Smith, a Member of the United States Board of Tax Appeals, on November 12th and 13th, 1934. William R. Spofford, Esquire, appeared for George W. Elkins, the taxpayer and petitioner before the Board of Tax Appeals, and Dean P. Kimball, Esquire, and Hunter B. Linton, Esquire, for Robert H. Jackson, Esquire, Assistant General Counsel, Bureau of Internal Revenue, appeared for the Commissioner of Internal Revenue.

Thereupon, counsel for the petitioner offered for the record an "Agreed Statement of Facts" executed by counsel for petitioner and counsel for respondent, and the same was duly received by the presiding Member of the Board. Said stipulation of agreed facts is set forth in full immediately following the pleadings in the record in this proceeding, and is hereby incorporated by reference into, and made a part of, this statement of evidence.

Thereupon, FRANK HEYWORTH TALBOT, having been called by the petitioner as an expert witness and having first been duly sworn, gave the following testimony:

My name is Frank Heyworth Talbot. My address is 3, Hare Court, the Temple, London, England. My occupation is Barrister. I have been a member of the English Bar for nearly four years. My practice deals almost exclusively with revenue matters; nine-tenths of my work is income tax and surtax work. I was graduated with the degree of Bachelor of Laws from London University and am a member of the Laws Faculty of the University. I have studied income tax law for more than twenty years. I became a member of the staff of the Inland Revenue Department of Great Britain in 1912 and had intensive training in income tax law for a period of over three years. In 1915, I was appointed an assistant surveyor of taxes and in 1919 I was promoted to be one of His Majesty's inspectors of taxes, continuing as an official of the Inland Revenue Department until 1930. For the greater part of that period I had independent charge of a tax district and within that district I was charged with the control of the administration of income taxes. My office staff consisted of forty or fifty people; some of them executive, some clerical, and some technical. My duties included control of all assessors and collectors of taxes within my district. As the holder of that office, I signed all checks drawn upon the National Exchequer in repayment of income taxes found to be due taxpayers. For many years I must have approved repayments to the number of over ten thousand claims per annum and my signature has been responsible for the payment from the National Exchequer into the hands of taxpayers of many millions of pounds sterling as income tax repayments. During the last three years of my service with the Inland Revenue Department, I was

located at the head office—Somerset House, London—doing work of a specialized character. I was one of the two secretaries of the Parliamentary Committee on Income Tax Codification set up by Winston Churchill, then Chancellor of the Exchequer. My duties in such capacity consisted mainly of research into English income tax law, the writing of brochures, memoranda and minutes upon the effect of those laws and in drafting a new act which will probably be introduced into the House of Commons some time next year. I prepared and published the fourth edition of "Harrison's Index to Tax Cases" while a member of the Inland Revenue Department, copies of which were issued to every member of the Inland Revenue's technical staff.

(Thereupon, Mr. Talbot identified a pamphlet entitled "Income Tax Act of 1918, 8 and 9, George V, Ch. 40" as a King's Printer's copy of the Income Tax Act of 1918. Counsel for petitioner offered in evidence the King's Printer's copy of the Income Tax Act of 1918, which was received as Petitioner's Exhibit No. 1. This exhibit is attached to this Statement of Evidence in Appendix "A.")

The Income Tax Act of 1918 represents a consolidation enactment composed of the income tax acts that remained on the statute book at the date at which it was passed. As it came into the statute book it automatically repealed all existing income tax enactments, and contained within its provisions the whole of the statute law of the United Kingdom bearing upon income tax. This act is in force today, subject to such amendments as have been made from time to time by the annual finance acts. In England our income tax is still an annual tax, and in order to obtain effective operation, the tax must be and is imposed year by year

by the enactment of sections embodied in the annual finance act. The annual finance act for the particular year in which it is passed provides that income tax shall be charged at a particular rate and that surtax shall be charged at particular rates and that those taxes,—or I should more accurately say "that tax", because income tax and surtax are one and the same tax in English law,—is to be assessed, levied and paid according to the provisions of the Income Tax Act of 1918, just put in evidence. Also, amendments to and modifications in the existing laws, as expressed in the Income Tax Act of 1918, are customarily embodied in the annual finance acts.

It is true to say that immediately after midnight of April 5th in any year income tax ceases to exist as an impost or tax in the United Kingdom and income tax does not recommence in the strict sense until some three or four months later when the annual finance act imposing the tax for the new year is passed. In this interim between the end of one fiscal year and the passing of the finance act for the ensuing fiscal year, the administrative machinery and provisional deduction of income tax from dividends, interest and rent, are continued by The Provisional Collection of Taxes Act of 1913, but if Parliament were to neglect within four months of the 5th of April in any year to impose an income tax, the income tax would pass altogether from our fiscal system and repayment would have to be made of any tax that might have been provisionally charged or collected back to the 5th of April preceding.

In any year, the income tax law effective for that year is the Income Tax Act of 1918 as amended by all finance acts since that date. The income tax for the current fiscal year, 1934-1935, is imposed by a certain section in the Finance Act of 1934, but the law governing the imposition, assessment, levy and collection of

that tax is governed by the Income Tax Act of 1918 as amended and amplified by the finance acts for the years 1918 to 1934, both inclusive.

(Thereupon, Mr. Talbot identified a pamphlet entitled "Finance Act of 1919, 9 and 10, George V, Ch. 32" as the King's Printer's copy of the Finance Act of 1919. Mr. Talbot also identified King's Printer's copies of the Finance Act of 1920; Finance Act of 1921; Finance Act of 1922; Finance Act of 1923; Finance Act of 1924; Finance Act of 1925; Finance Act of 1926; Finance Act of 1927; Finance Act of 1928, Finance Act of 1929; Finance Act of 1930; Finance Act of 1931; Finance Act (No. 2) of 1931; Finance Act of 1932; Finance Act of 1933; and Finance Act of 1934. Counsel for petitioner offered these in evidence and they were received as Petitioner's Exhibits Nos. 2 to 18, inclusive. The foregoing exhibits are attached to this Statement of Evidence in Appendix A.")

King's Printer's copies are official copies, and in our courts the text of an Act of Parliament may be proved in evidence by the production of a King's Printer's copy.

Q. Mr. Talbot, suppose an English company, carrying on business in the United Kingdom or elsewhere, declares a dividend in the sum of 1000 pounds sterling and, on making payment of that dividend to its stockholders, deducts income tax therefrom at the prevailing rate of 5 shillings for each 20 shillings in the pound, what form of dividend certificate will accompany the payment?

A. The payment will be accompanied by a certificate showing on its face such wording as this: "Gross amount of dividend, 1000 pounds sterling, income tax appropriate thereto, 250 pounds sterling, net amount of dividend, 750 pounds sterling."

Q. Mr. Talbot, from the standpoint of English law and taking the illustration just given, would it be accurate to say that the sum of 250 pounds, which you have mentioned as being deducted by the company from the gross amount of dividends, constituted payment by the shareholder of 250 pounds income tax?

MR. KIMBALL: I object to the form of that question, your Honor; it is leading.

MR. SPOFFORD: Your Honor, this man has qualified as an expert.

THE MEMBER: Objection overruled.

By MR. SPOFFORD:

Q. Shall I repeat the question?

A. No; I followed it as you read it. My answer is "Yes, undoubtedly."

(Thereupon, Mr. Talbot's attention was directed to a communication sent by Tobacco Securities Trust Company, Limited, to George W. Elkins, the petitioner, at the time of transmitting to him a warrant for his dividend. This communication is set forth as Exhibit "E" attached to the statement of agreed facts executed by counsel for petitioner and respondent, which statement and all exhibits attached thereto are part of the record in this proceeding. The communication states:

Dear Sir or Madam,

We have pleasure in enclosing warrant for an interim dividend of 5 per cent. (less British income tax) for the year ending 31st October, 1931, upon 1,327 pounds ordinary stock as follows:

Gross amount of dividend, 66 pounds, 7 shillings; less British income tax at 3 shillings, 6 pence in the pound, 11 pounds, 12 shillings and 3 pence.

Net amount of warrant, 54 pounds, 14 shillings and 9 pence.)

Apart from minor variations of wording, which are of no substance at all, this communication is in the form that I have just described; and in this particular instance Mr. Elkins is regarded by English law as having paid English income tax to the amount of 11 pounds, 12 shillings and 3 pence shown in the communication. In deducting income tax from dividends, an English company relies on the authority of Rule 20 of the General Rules of the Income Tax Act of 1918, which reads:

> "The profits or gains to be charged on any body of persons shall be computed in accordance with the provisions of this Act on the full amount of the same before any dividend thereof is made in respect of any share, right or title thereto, and the body of persons paying such dividend shall be entitled to deduct the tax appropriate thereto."

THE MEMBER: Let the record show that Rule 20 just read is found in Exhibit No. 1, at page 199. May I amplify this by referring to Section 33 of the Finance Act of 1924, which reads:

> "Every warrant or cheque or other order drawn or made, or purporting to be drawn or made, after the thirtieth day of November, nineteen hundred and twenty-four, in payment of any dividend or interest distributed by any company, being a company within the meaning of the Companies (Consolidation) Act, 1908, or a company created by letters patent or by or in pursuance of an Act of Parliament, shall have annexed thereto or be accompanied by a statement in writing showing—
>
> (a) the gross amount which, after deduction of the income tax appropriate thereto, corresponds to the net amount actually paid; and

(b) the rate and the amount of income tax appropriate to such gross amount; and

(c) the net amount actually paid."

THE MEMBER: What the witness just read is found on page 19 of Petitioners' Exhibit No. 7.

Exhibit "E" attached to the stipulation of agreed facts in the *Elkins* case is a certificate such as is required by Section 33 of the Finance Act of 1924.

(Thereupon, Mr. Talbot's attention was directed to Exhibit "F" attached to the stipulation of agreed facts entered into by counsel for petitioner and respondent in the *Elkins* case, which stipulation and all exhibits attached thereto, are a part of the record in this proceeding. Exhibit "F" is a communication sent by Tobacco Securities Trust Company, Limited, to George W. Elkins, the petitioner, showing the same information as is shown in Exhibit "E".)

In the instance of the transmission of the dividend warrant for Tobacco Securities Trust Company shares to George W. Elkins on December 10, 1931, from which 42 pounds, 8 shillings is shown as deducted, English law regards that tax as having been paid by the shareholder. Exhibit "F" is a statement such as is required by Section 33 of the Finance Act of 1924.

My opinion that such a deduction of income tax from a dividend as we have been considering constitutes in English law a payment of tax by the shareholder is based upon legislative authority, judicial authority, and the practice of the Inland Revenue Department which administers the Income Tax Act.

In connection with the authority which I find in statutory enactments, I want to refer to about four sections of the income tax acts. Section 29 of the Income Tax Act of 1918 reads:

"If it is proved to the satisfaction of the general commissioners that any person whose claim for exemption, abatement, or relief has been allowed, has paid any tax, by deduction or otherwise, the general commissioners may, in the form prescribed, certify the facts proved before them to the special commissioners."

Taking those words "has paid any tax, by deduction or otherwise . . : " I say that in my opinion the Legislature contemplated that a deduction of tax made from a dividend or from interest or from rent was a payment of tax.

I now want to refer to Section 32 of the Income Tax Act of 1918, and to subsection 2.

THE MEMBER: That is found on page 17 of Petitioners' Exhibit No. 1.

Subsection 2 reads:

"If any such person is charged to tax under any Schedule and has paid that tax, or has paid, or has been charged with tax by deduction or otherwise, he shall, on a claim being made to the special commissioners, and on production . . . " and so forth. I do not think I need read any further.

I take these words, "has paid, or has been charged with tax by deduction or otherwise . . . ", and I say that those words, in my opinion, indicate that in the view of the English legislature a deduction of tax was a payment of tax.

I now refer to Section 33, subsection 1 of the same act.

THE MEMBER: That is found on page 19 of Petitioner's Exhibit No. 1.

That subsection reads:

"Where an assurance company carrying on life assurance business, or any company whose business

consists mainly in the making of investments, and the principal part of whose income is derived therefrom, or any savings bank, or other bank for savings, claims and proves to the satisfaction of the special commissioners that, for any year of assessment it has been charged to tax by deduction or otherwise . . . ". I think I may pause there, because those are the words upon which, as far as this section is concerned, I rely in saying that in the view of the legislature, tax may be charged as well by deduction as by direct assessment.

I now desire to refer to one more section, Section 27 of the Finance Act of 1920. This section is the section whereby relief is given to a British taxpayer in respect of double taxation within the Empire. We limit the relief to double taxation within the Empire, and this is the section that affords such relief and it begins with these words:

> "If any person who has paid, by deduction or otherwise, or is liable to pay, United Kingdom income tax for any year of assessment on any part of his income proves . . . ."

THE MEMBER: That is found on page 21 of Petitioners' Exhibit No. 3.

In view of the Legislature, income tax is paid by deduction as well as by the operation of a process of direct assessment. In support of my opinion, I fasten upon the words "If any person who has paid, by deduction or otherwise . . . ". There are other sections in the same strain.

I will now refer to the views expressed by the English Courts. My first citation is in the case of *Marion Brooke v. The Commissioners of Inland Revenue,* reported in VII Tax Cases, at page 261. In that case the question was whether or not the appellant, who was a

married woman, was chargeable with super-tax for a certain year, although she was not resident in the United Kingdom during that year, and whether or not she was in any event, being a married woman, chargeable in her own name. I refer to two passages from the judgments that were delivered in that case, in the first place, on page 269—

> MR. KIMBALL (interposing): Just a moment. I object to the witness reading in support of his opinion, excerpts of the British decision which, as I conceive the law of evidence, an expert witness cannot buttress his opinion by quoting a text, and I cite for that Jones Commentaries on Evidence, page 3200. In other words, counsel on direct examination is not permitted to examine an expert by merely reading to him passages or having the witness read passages, and asking whether or not he agrees with such passages. That is the effect of what is now proposed.
>
> THE MEMBER: I do not think so. Objection overruled.
>
> MR. KIMBALL: Exception, please.
>
> THE MEMBER: Exception noted.

On page 269, Mr. Justice Atkin who heard the case in the High Court, King's Bench Division, used these words: "But I think it is fallacious to say that the individuals who receive income from which Income Tax is deducted at the source, are not chargeable with the tax. I think there is some authority for the Appellant's contention in the judgment in *Purdie v. The King*. The judgment in that Case may be unassailable, but with the greatest respect I find it difficult to reconcile some of the reasoning of the learned judge in that Case with the reasons given by the noble Lords in the case of *Ashton Gas Company v. The Attorney-General*, which

does not seem to have been cited in *Purdie v. The King.* If the payee has not paid Income Tax by allowing the deductions, as by the appropriate sections he is compelled to do, it is difficult to see how he escapes paying Income Tax on the net sum that comes into his hands. Section 163 of the Act of 1842, in terms, seems to decide this point. It speaks 'of any person charged or chargeable to the duties granted by this Act either by assessment, or by way of deduction from any rent, annuity, interest, or other annual payment to which he may be entitled'. See also the Taxes Management Act, 1880, Section 82. In truth, this contention, if sound, is applicable in no way specially to non-residents, but would apparently exempt from Super-tax all income from which Income Tax was deducted at the source. Such a construction of the Act would defeat the clear intention of the Legislature and cannot be adopted."

On page 274, Lord Justice Warrington in the Court of Appeal in the same case, said: "It seems to me, with all respect to the argument, it makes no difference for this purpose whether the Income Tax is deducted at the source, under the operation of what Lord Halsbury calls in the *Ashton Gas Company v. The Attorney-General* the somewhat difficult and complex machinery which makes the officers of the company officers of the Finance Department of the Government for the purpose of collecting the tax, or whether the tax is directly assessed upon the person in question. She pays the tax and in my opinion she is liable to pay Super-tax also." It will be noted that Lord Justice Warrington said: "She pays the tax"; the tax under consideration was tax that had not been the subject of any direct assessment upon Mrs. Brooke. It was tax that had been deducted from dividends she had received.

I now refer to *Williams v. Singer,* and others, also reported in VII Tax Cases.

MR. KIMBALL: I wish to make the same objection, if your Honor please, to the witness reading from published British decisions in support of his opinion. I respectfully maintain that it is not competent for him to do that on direct examination.

THE MEMBER: Objection overruled.

MR. KIMBALL: Exception.

THE MEMBER: Exception noted.

At page 402 the Master of the Rolls said:

"Again, it is not true to say that the Income Tax Acts look only to the legal owners, as they contain references to persons who *pay* Income Tax either by way of deduction or otherwise. A person who pays Income Tax by deduction is a taxpayer." His Lordship then cites the *Brooke* case, to which I have just referred.

Finally, I want to refer to a quite recent decision of the Court of Appeal in *Hamilton v. Commissioners of Inland Revenue,* reported in XVI of Tax Cases at page 213.

MR. KIMBALL (Interposing): Just for record purposes, I wish to make objection and take an exception—I know what your Honor's ruling will be.

THE MEMBER: Yes, the objection is overruled, and exception is noted.

At page 234 of the *Hamilton* case, Lord Justice Lawrence said:

"It seems to me, in those circumstances, that there is no room for the argument which was addressed to us, that the appropriate tax was a proportion of the tax which the company itself had paid in respect of the gains and profits out of which the dividend was paid. It seems to me quite plain,

on the wording of Rule 20 that the tax appropriate to the dividend is the tax ascertained in the manner I have explained. As my Lord has pointed out, the taxpayer is the shareholder, and, under this machinery, the company is made the collector of the shareholder's tax for the Revenue. I agree, therefore, that this appeal fails."

In the same case, Lord Justice Romer said at page 235:

"That being so, the only question remaining on the appeal is as to what is the tax appropriate to be deducted from a dividend when the company pays it. It is said by the Appellant that where a company has paid a tax to the Crown it is not appropriate, indeed it is most inappropriate, that when dividing profits among shareholders it should deduct from a dividend any greater sum than it has paid itself to the Crown in respect of tax on these profits. That argument has frequently been addressed to the Courts—at any rate, it was addressed to the House of Lords in the *Scottish Union* case. In reference to it, Lord Cave said this: 'It was pointed out in the course of argument that such a construction of the statute'—he was there dealing, I think, with Section 54 of the Act of 1842, and not with Rule 20 of the Act of 1918—'would lead to results which cannot possibly have been intended'. Further than that, it seems to me that there is a fallacy lying at the very root of the argument and that fallacy is this. It treats the company not as a separate legal entity but as merely being equivalent to the aggregate body of its shareholders and treats the company when it pays tax to the Crown as paying tax on behalf of its shareholders. It has, however, frequently in recent days been pointed out by the

Courts, contrary to the opinion entertained by Mr. Justice Astbury in the *Rover* case, that the company is one taxpayer and that each individual shareholder is another, and a separate taxpayer, on whose behalf the company deducts a tax when it pays a dividend, but on whose behalf it is not paying the tax when it pays its own tax to the Crown."

(Thereupon, three pamphlets bearing the titles "Volume VII, Part IV, Reports of Tax Cases" (containing the official report of the case of *Marion Brooke v. The Commissioners of Inland Revenue,* at page 261), "Volume VII, Part VII, Reports of Tax Cases" (containing the official report of the case of *Williams v. Singer, and others,* at page 387), and "Volume XVI, Part IV, Reports of Tax Cases" (containing the official report of the case of *Hamilton v. The Commissioners of Inland Revenue,* at page 213) were identified by Mr. Talbot as official reports of tax cases printed and published by His Majesty's Stationery Office. They were offered by counsel for the petitioner and received in evidence as Petitioner's Exhibits 19, 20 and 21. The full texts of the relevant court opinions and judgments contained in these exhibits are set forth in Appendix "B" attached hereto.)

With reference to the practice of the Inland Revenue Department, as I have already stated, I had the responsibility—indeed it was the ultimate responsibility—within the tax district of which I had charge, of the signing of checks upon the National Exchequer in respect of repayments to be made to taxpayers who succeeded with their claims to the effect that they had overpaid income taxes. About 70 per cent. of all the income received by individuals in the United Kingdom

suffers what is known in the United Kingdom as deduction of tax at the source. The present standard rate of income tax in England is 4 shillings. That is considered by the legislature to be too oppressive in the case of people having small incomes. Consequently, provision is made for the relief of such persons from taxation and an individual whose total income from all sources does not exceed 100 pounds per annum is entitled to exemption from income tax altogether. By reason of the operation of the principle of deduction of income tax at the source, many hundreds of thousands of people in England, although their particular incomes are exempted from income tax by law, receive their income in the form of dividends from which income tax has been or purports to have been deducted by the dividend-paying companies. At the end of the income tax year, these people present to the Inland Revenue Department at the office of the district inspector for their locality claims for repayment of taxes deducted from their dividends. These claims are accompanied by dividend warrant counterfoils in the form of the exhibits which were put to me a little while ago. The district inspector's staff examines the claims, and, in every case where it is found that there is a title to exemption or relief, a check is presented to the district inspector for his approval and signature. The Inland Revenue Department regards taxes deducted from dividends as in all respects the same as tax shown by collectors' receipts to have been paid on a direct assessment. In the course of my service as a district inspector, I must have paid out of the National Exchequer many millions of pounds sterling, which could have been paid out properly only if tax deducted from the dividends of the dividend-paying companies was tax paid by the recipients of those dividends.

When I speak of an income tax of 4 shillings, I mean 4 shillings in every 20 shillings; 20 shillings be-

ing 1 pound; to express it as you do, it would be tax at the rate of 20 per cent.

Thus far I have dealt only with the case in which a company declares a dividend in a gross sum and on making payment of the dividend specifically deducts income tax therefrom so that the shareholder receives a net sum less than the gross amount of dividend by an amount equal to the tax deducted. In England there is also a form of dividend called a "free-of-tax dividend". The expression is a term of art well known to English courts, the Inland Revenue Department and English practitioners, and means a dividend of such a sum as, after the deduction of income tax at the appropriate rate, amounts to the net sum actually paid. It does not mean a dividend which has not borne income tax or has not been charged with income tax. It means the net equivalent of a notional gross, assuming the tax to have been added on in the process that, in England, is described as a grossing-up-process.

For example, if the tax rate is 5 shillings in the pound and the company has profits of 1000 pounds, the company will be assessed to income tax in the amount of 250 pounds, leaving for actual distribution 750 pounds. However, its accounts show a profit, before any income tax deduction, of 1000 pounds, and the company is entitled to declare a dividend of 1000 pounds, because income tax is regarded both by income tax law and company law as being a disbursement out of profit and not an expense incurred in earning profit. The company may either declare a dividend of 1000 pounds making a deduction of 250 pounds under Rule 20, which I have mentioned, or it may adopt a form of words whereby it declares a "free-of-tax dividend" of 750 pounds, that being a dividend of that residual sum that is left after the income tax has been paid upon the company's profits. From the standpoint of the shareholder the position is

identical; he gets 750 pounds in cash and he must be regarded as having received 1000 pounds of income and having paid tax of 250 pounds. Our courts have consistently said that the result is precisely the same, whichever of the two methods the company chooses to employ in the declaration of a dividend. Moreover, the form of the dividend warrant or counterfoil required to be sent to the shareholder by the company under Section 33 of the Finance Act of 1924, discussed above, must be the same, because of the provision that the statement must show the gross amount of the dividend, the amount of tax appropriate thereto, and the net amount actually paid. In the event that a claim for repayment is made to the Department of Inland Revenue and the accompanying dividend warrant shows a "free-of-tax dividend" in the sum of 750 pounds, the Department treats the recipient of that dividend as having received 1000 pounds of income and as having paid 250 pounds in tax, and will draw a check on the National Exchequer up to the amount of 250 pounds of tax in respect of any relief or repayment to which that particular taxpayer may be entitled.

If a company does not declare a dividend out of its profits, the company will be left to bear the tax. Its only way of recovery from its shareholders is to pay a dividend and pass the tax on in that way. There is no separate corporation tax upon the corporation. It pays exactly the same income tax as an individual. From 1920 to the middle of 1924, we had a corporation profits tax which was a separate tax upon the corporation itself and had nothing to do with individuals. There was no passing on of this tax. It was, in a sense, an income tax because it was computed by reference to the profits of the corporation. There was this point of distinction: In the case of the corporation profits tax, interest and annual payments other than interest on permanent loans were allowed as a deduction in com-

puting the profits of the corporation. For income tax purposes, such interest is not allowed as a deduction because the corporation pays tax upon its aggregate profits without deduction of the interest and recovers tax upon the interest by deducting it from the recipients thereof when it makes payment. In the years involved in these proceedings, there was no separate corporation tax.

Assuming that a corporation had profits of 1000 pounds and did not declare any dividend during the year, the profits that could be carried to surplus would be 750 pounds. If in another year that amount is paid out as a dividend, the company on making payment thereof is entitled to deduct the tax appropriate thereto. The company is liable to account to the revenue year by year according to the amount of its profits for the year. It has already accounted for the tax itself and is recouping itself whenever it pays the dividend.

Any shareholder who might be entitled to a repayment of tax in the year in which the dividend was paid could get it, even though the corporation had paid tax during the preceding year in which it earned the profits. Our conception is that the nature of the income of a corporation is different from that of the income of the shareholder. The income of a corporation as such is the profit or gain from its undertaking or trade. The income of the shareholder is not conceived to be profit of trade. It is conceived to be other income arising from an investment; and by the operation of our scheme of deduction of tax at the source, what it comes to is: If a corporation does not choose to distribute a dividend it is left to bear income tax upon the whole of its profits. To the extent, however, to which it declares a dividend it is allowed to recoup to itself tax upon that part of its profits which it has used to give an income to somebody else, its sharehold-

ers, into whose hands it comes not as a trading profit but as an annual return from investment. We leave the company bearing the tax as its own tax until it pays its dividend. When it pays a dividend, it gives income to somebody else who becomes liable to tax upon that income. The process is for the company to recover the tax from the individual and make him pay in that way. The company keeps the tax itself as a matter of account, by way of process of account, because there would be no point in having payment and repayment in opposite directions.

With reference to repayments, if the dividend was received by the shareholder in 1934, even though the profits might have been earned by the company in 1930 and income tax thereon paid in 1930 by the company, nevertheless, so far as repayment to the shareholder is concerned, that repayment is recoverable only to the shareholder's 1934 income.

Going back to "free-of-tax dividends", there are two cases which show that there is no difference between such dividends and dividends declared gross from which tax is specifically deducted pursuant to Rule 20. *Ashton Gas Company v. The Attorney-General,* (1906) Appeal Cases, page 10, involved a public utility authorized by its statutes to pay a preference dividend limited to 10 per cent. The company in prior years had declared a gross dividend of 10 per cent. and specifically deducted tax therefrom before payment. In the year giving rise to the litigation it declared a "free-of-tax dividend" of 10 per cent. It was held in the House of Lords that the declaration of a "free-of-tax dividend" of 10 per cent. was *ultra vires* because, in effect, the company gave its shareholders a dividend of more than 10 per cent. from which income tax was deducted, leaving a net of 10 per cent. It was held that when "free-of-tax" is used in relation to a

dividend, it means that the company is declaring a dividend of such a sum as, after the deduction of income tax at the appropriate rate, amounts to the net sum actually paid.

Thereupon the following colloquy took place between the presiding Member of the Board and counsel for petitioner and counsel for respondent:

MR. SPOFFORD: Your Honor, we do not have a copy of the opinion of the *Ashton Gas Company* case. If your Honor wants that, or feels that it would be of any help in determining this question we shall be pleased to have a copy made from the English reports which are available.

THE MEMBER: You stated it, did you not?

THE WITNESS: Yes.

THE MEMBER: I am sure we have it in our own library.

MR. KIMBALL: Does that mean that these cases will be considered by your Honor whether or not they are produced here in pamphlet form?

THE MEMBER: Yes, indeed, if they are called to my attention.

MR. SPOFFORD: Your Honor, I had in mind that we would be glad to furnish you with an opinion in the *Ashton Gas Company* case, if you thought it would be helpful; we had not thought so. I do not believe that your Honor has the right to go beyond the record and assume the British cases. I think it is a matter of fact that must be proven.

THE MEMBER: I am sure that the Board won't go beyond the cases that have been cited, but I did say to Mr. Kimball that if he wanted to call my attention to any particular British case, that if we had the report, I would be glad to refer to it

to see if it in any way contradicts the cases cited to the Board by the witness.

MR. SPOFFORD: Yes, your Honor.

The second case is that of *Sir Marcus Samuel, Bart., v. The Commissioners of Inland Revenue,* reported in VII Tax Cases, at page 277. It was held that a shareholder's return of total income in the case of a "free-of-tax dividend" must include, for super-tax purposes, the amount of dividend actually received, plus the amount of income tax in respect of it; that total income from a "free-of-tax dividend" should be computed as follows: Assuming the net dividend to be 100 pounds and the rate of tax 1 shilling, 2 pence; add back to the net dividend income tax at 1 shilling, 2 pence for every 18 shillings, 10 pence in the net amount. The amount thus to be added back is 6 pounds, 3 shillings, and 10 pence—giving a gross amount of dividend of 106 pounds, 3 shillings and 10 pence, the amount to be reported as total income for super-tax purposes. This appears in the headnote of the case, and, having read the judgment on many occasions, I am able to assure the Board that the headnote is a correct summary of what was held.

(Thereupon, Mr. Talbot identified a pamphlet entitled "Volume VII, Part V, Reports of Tax Cases" (containing the official report of the case of *Sir Marcus Samuel, Bart., v. The Commissioners of Inland Revenue,* at page 277) as an official report printed and published by His Majesty's Stationery Office. Counsel for the petitioner offered said pamphlet and the same was received in evidence as Petitioner's Exhibit No. 22. The full text of the opinion and judgment contained in this exhibit is set forth in Appendix "B" attached hereto.)

(Thereafter, Mr. Talbot's attention was directed to the four specimen communications of the British-American Tobacco Company set forth in full as Exhibits "A," "B," "C" and "D," attached to the stipulation of agreed facts executed by counsel for petitioner and respondent, said stipulation and all exhibits attached thereto being a part of the record in this proceeding.)

Exhibits "A," "B," "C," and "D" are all in the form of blank dividend warrants for "free-of-tax dividends," using that phrase in the sense in which I have endeavored to define it above. The dividends contemplated by Exhibits "E" and "F," to which my attention was directed earlier, were dividends declared as a gross dividend from which tax is deducted. Exhibits "A," "B," "C" and "D" contemplate payments of a "free-of-tax dividend." The communications or warrants properly show the information required by Section 33 of the Finance Act of 1924. The only difference in effect between the two forms of warrants is that in the one case you have a formal declaration of a gross dividend, from which income tax is deducted specifically in making payment; in the other case, you have a formal declaration of a "free-of-tax dividend" which, for all the purposes of the United Kingdom Income Tax Acts, is treated as a dividend of such a sum as, after the deduction of income tax therefrom, at the appropriate rate, amounts to the net sum actually paid. In substance, there is no difference whatsoever. The phrase "free of British Income Tax" used in Exhibits "A" and "B" is in no sense different from the phrase "free of United Kingdom Income Tax" used in Exhibits "C" and "D," although had I been asked to advise on the form, I would have recommended the latter form of expression. It all applies to the income tax we have been discussing.

(Thereupon, Mr. Talbot's attention was directed to two communications received by Mr. Elkins from the Imperial Tobacco Company when it transmitted dividend warrants to him in 1931, set forth in full as Exhibits "I" and "J" attached to the stipulation of agreed facts executed by counsel for the petitioner and respondent, said stipulation and all exhibits attached thereto being a part of the record in this proceeding.)

What I have said with respect to Exhibits "A," "B," "C" and "D" applies with equal effect to Exhibits "I" and "J" received by Mr. Elkins from Imperial Tobacco Company.

I have previously referred to "surtax"; it is not different from income tax, but surtax is merely a label to indicate a particular part or branch of our income tax. Section 38 of the Finance Act of 1927 makes my position clear. Subsection 1 reads:

> "Income tax for the years 1928-29, and every subsequent year shall, instead of being charged at a single rate, be charged at a standard rate, and in the case of an individual whose total income from all sources exceeds a stated amount, at a rate or rates exceeding the standard rate in respect of any part or parts of his income in excess of that amount, and where income tax is so charged for any year the following provisions shall have effect, subject to the other provisions of this Part of this act . . ."

It will be noted that income tax is to be charged at two rates: at a "standard rate" and in addition to that, in the case of an individual, at other rates, also higher rates. Subsection (b) reads in part as follows: ". . . where the amount of income tax payable by an individual for that year in respect of his total income is greater than the amount which would have been pay-

able by him in respect thereof if income tax had been chargeable at the standard rate only, the difference between those two amounts (in this Part of this Act referred to as 'surtax') shall be computed, assessed, charged, collected, and paid as a deferred installment of income tax according to the provisions of this Part of this Act relating to surtax . . ."

There has never been any doubt expressed as to the significance of this language in England. There is one tax, an income tax. Taking my own case as an illustration: I carry on my practice as a barrister and earn certain emoluments, I have certain real property and I have certain stocks and shares. My income from my professional practice is charged to income tax at the standard rate of 4 shillings by the process of a direct assessment against me under Schedule D. My real property is assessed to income tax by a direct assessment under Schedule A. I receive my dividends as net sums, income tax having been deducted therefrom by the companies. Thus far, I have been considering only income tax at the standard rate, but the Income Tax Acts provide that since my total income from all sources exceeds the sum of 2000 pounds sterling, I am also liable to income tax at a higher rate than the standard rate. The excess of the tax over the income tax calculated at the standard rate is called a surtax, but it is all an income tax. Surtax is distinguishable in respect to the method of collection; it is assessed and charged upon me as an individual in one sum without distinguishing ingredients. In the assessment and collection of surtax there is no deduction of tax at the source as in the case of income tax at the standard rate. It is convenient in common parlance to apply the label "income tax" to the income tax at the standard rate, and to apply the label "surtax" to that higher rate I have mentioned. But in considering the true character of this higher-rate tax, surtax, from the language in

the section, the conclusion is inescapable that surtax is all part of the income tax. With respect to dividends in determining the basis of assessment for surtax purposes, I can make my position clear by telling you just what I do myself when I am making up my surtax return. Assuming that there has been declared in my favor a dividend by Tobacco Securities Trust Company of 1000 pounds, as a gross dividend, I actually receive only 750 pounds, income tax having been deducted. In preparing my return of income for surtax assessment purposes, I insert my professional profits, my property, and also—in respect of this Tobacco Securities Trust Company dividend—the sum of 1000 pounds, ignoring the fact that income tax of 250 pounds has been deducted. Assuming further that I receive a "free-of-tax dividend" of 750 pounds from British-American Tobacco Company, my surtax return will show: Dividends, British-American Tobacco Company, "free-of-tax dividend" of 750 pounds, equals 1000 pounds, 1000 pounds being carried out in the last column as the amount of my income from that source. The "free-of-tax dividend" is required by our law to be "grossed-up" to its equivalent expressed in terms of a gross dividend, and it is upon this "grossed-up" amount that surtax is assessed and collected.

In past years there was a view in England, never subscribed to by myself, nor do I think by the majority of the English lawyers, that when a company pays its tax on its profits, it is paying the tax as an agent of its shareholders. It is quite clear since the decisions of the House of Lords in *The Commissioners of Inland Revenue v. Blott; The Commissioners of Inland Revenue v. Greenwood;* and *Neumann v. The Commissioners of Inland Revenue,* that a company in England does not pay United Kingdom income tax as the agent of its shareholders. As I have previously endeavored to point out, the income of a company takes the form of

profit or gain from trade, while the income of a shareholder takes the form of the yield from the holding of an investment. The income of the company accrues from day to day as a trading profit made in the course of its business; the income of the shareholder does not arise from day to day and he never becomes entitled to any part of the company's profits until such time as a dividend is declared. The company's income tax upon its trading profit is collected by direct assessment, whereas the shareholder's profit in the form of the yield of his shares, or dividends, is liable to income tax by the process of deduction. If no distribution of profits is made by the company, the question of income tax liability on the part of the shareholder does not arise because he has no income. When a dividend is declared and paid, the shareholder becomes entitled to income and becomes liable to tax upon that income, which tax is levied upon and collected from him by the process of deduction of tax at the source. In order that the company may be *pro tanto* relieved of the tax burden, it is allowed to retain the amount of the tax that it has deducted from that part of its profits which it has distributed in the form of dividends among its shareholders, the net result being that the company is left to bear the income tax upon additional profits left undistributed, and the shareholder is made to bear—to pay by deduction, to use the statutory phrase—the income tax upon his income from the company.

The evidence which I have given concerning the nature of this tax and the person upon whom it is assessed applies with equal force for every year from 1918 to the present time.

Briefly outlining the history of income tax in the United Kingdom: It began in the year 1799. Mr. Pitt, the younger, introduced the act, which was framed upon the footing of direct assessment and collection of tax in a single sum calculated by reference to the taxpayer's

total income from all sources. There was no collection by means of deduction at the source under this Act. Tax in this form was highly unpopular and the alleged ground of complaint was that this income tax was unprecedentedly inquisitorial in making public, even to an assessor of taxes, particulars of the taxpayer's income. In 1803, the then Chancellor of the Exchequer evolved a collection method ostensibly for the purpose of meeting the objections based on the inquisitorial character of the tax, but, in fact, with the purpose of setting up an efficient method of collection. The method was that of deducting tax at the source before the payor made payment to the taxpayer; and this method was applied to many sources of income payments, including, for example, Government annuities, interest on Government loans, interest on company obligations and dividends. It was thus that the modern system of income tax as we now have it in the United Kingdom, the very foundation of which is the principle of collection of tax, or deduction of tax at the source, was set up. The objections voiced under the Act of 1799 were not only met, but also the tax collected for the first fiscal year under the Act of 1803 was more than double of that collected the previous year. The loss arising from evasion due to inaccurate returns was thus very materially reduced. The Act of 1803 was imposed only for three years, but its structure was reproduced in the Act of 1806, and again for another term of five years in the Act of 1811. After the Battle of Waterloo, income tax was not re-enacted until 1842, when Sir Robert Peel reintroduced income tax in the Income Tax Act of 1842, which act adopted the model and most of the literal text of the Income Tax Act of 1806. From 1842 until the present date, income tax has been in continuous existence, the continuity being secured by the process of annual re-enactment which I have described earlier. In 1853, under Mr. Gladstone, the tax was

extended to Ireland, giving rise to a great deal of trouble. Various amendments, of both substance and procedure, were made between 1853 and 1918.

In 1918, the work of consolidating all the existing income tax acts was undertaken. They were consolidated into the Act now known as the Income Tax Act of 1918. As and when the 1918 Act came into operation, all previous income tax acts were automatically repealed, but it is significant to note that the structure of the 1918 Act and much of its literal text, corresponds with the Income Tax Act of 1806, so that in the United Kingdom we are administering and raising revenue by means of an income tax act framed in 1806, and a half century before the limited liability company was really an effective organ. In my opinion, income tax in the United Kingdom is maintained, and continues to be effective as a means of raising national revenues, because it was initially framed on sound lines, namely, collection of tax by deduction at the source, that being the cardinal feature of our system.

(Thereupon, the following colloquy took place between the presiding member of the Board and the witness:)

THE MEMBER: Mr. Talbot, I understood your statement to be that dividends are reported on Schedule D of the return. Is that correct?

THE WITNESS: No, I could not have made myself clear there. The Schedules A, B, C, D and E, only provide for the taxation of income which is liable to what we call direct assessment, or the making of assessments upon which the Collector of Taxes will demand and collect a sum of money. Now, the company in respect of its trading profits is assessed under Schedule D, but when that company declares a dividend on those profits, it is not necessary for there to be any schedule of assess-

ment for those dividends, because those dividends are being taxed by the process of deduction; in other words, under Rule 20, as you will remember.

THE MEMBER: Yes. Now, a profession is taxed under what schedule?

THE WITNESS: Schedule D.

THE MEMBER: Assuming that a stockholder had a tax-free dividend, received a tax-free dividend of 750 pounds, he would report on his return, would he not, a dividend of a thousand pounds?

THE WITNESS: That is so.

THE MEMBER: And in the computation of the tax, does he take credit for the tax that has been paid by the corporation from which he received the dividend?

THE WITNESS: In respect of what we call the income tax, that is to say, the standard rate income tax, he is not taxed again in respect of that tax-free dividend.

Have I taken your point there?

THE MEMBER: Yes.

THE WITNESS: May I make it quite clear by taking my own case on that point?

THE MEMBER: Yes, indeed.

THE WITNESS: I make my return, which shows profits from professional practice, "X" pounds. Then, underneath there will be annual value of residence, my dwelling house, similarly the annual value of any other properties that I own, and then, underneath that, dividends from such and such companies.

Now, if I received 750 pounds net from those dividends, I insert the figure of 1000 pounds, that being the gross equivalent.

Now, for the purpose of income tax—and I am still speaking of the standard rate income tax, the thing which, as I understand, we are talking about today—a direct assessment is made upon me under Schedule D in respect of my practice profits, and I shall have to pay tax amounting to 25 per cent. of "X", that being the standard rate of income tax on "X".

In respect to the annual values of my properties, for the property that I own and occupy, I shall have to pay a tax of 25 per cent. for normal income tax,—25 per cent. of the annual value of that property. In respect of any of that property that is occupied by a tenant of mine, he has to pay the 25 per cent. tax upon the property, but when he pays the rent to me he deducts it. So that, I bear it in the deduction from rent.

THE MEMBER: That is irrespective of the amount of the rent even though it amounts to 100 pounds a year?

THE WITNESS: Yes. He may deduct—there is a curious little qualification, I do not want to confuse the issue, but to just clear it up as we go along—he may not deduct tax to an amount exceeding 25 per cent. of the rent that he pays to me, nor can he deduct more tax than he has had to pay over to the Crown. You see, the annual value usually assessed is somewhat lower than the rent. If he has only had to pay 25 per cent. of 80, and he pays a rent of 100 to me, he can only deduct 20 and not 25.

However, in that way, as you see, in respect of my property, I am being charged directly for the property that I own and occupy, and I am being charged indirectly in respect of the property that I own and let.

Now, as to dividends, those dividends have come to me net, the income tax having been deducted. It is true that I insert the figure of 1000 pounds, that being the figure of my gross income, but it is taxed income. I have had to pay that tax already, not directly to an ordinary Collector of Taxes, but to another sort of Collector for the Crown.

So, I don't pay any "normal" rate of tax—as I think you would say—on those dividends. They have already been taxed to the extent of the "normal" tax. But the point I am making is that, in addition, surtax must now be collected from me; and for the purpose of making the charge of surtax the special commissioners, whose duty it is to assess those surtaxes, just strike a total of all the items which I have mentioned. There is the "X" pounds from professional profits, the various annual profits from properties that I own, and there is the gross amount of my dividends, and the surtax is charged by a single assessment made upon me of the tax at the appropriate rate upon that total—that tax being the surtax portion of my total income tax liability.

THE MEMBER: Am I correct in understanding your testimony to be that when the corporation, the large company, pays the tax, it does not pay it in any sense as the agent of the stockholder?

THE WITNESS: Not at all.

THE MEMBER: Then it is a tax strictly upon a corporation in respect of its profits?

THE WITNESS: The tax paid—and this is a point in the testimony that I did want to make clear. and I know it is a most difficult one, and it is a matter of concept and is most difficult when

one has become accustomed to a different system—the tax that has been paid by the company to the Collector of Taxes is a tax upon the company's profits. That tax is paid by the company on its own behalf and not on behalf of its shareholders and not as the agent of its shareholders, but when that company declares a dividend and makes a deduction of tax from that dividend, the corporation is, as it were, acting as a collector. That dividend is liable to income tax in the hands of the recipient, but it is collected not by any process of direct assessment made upon the recipient but by a system whereby the company collects the tax. So, you have really the company acting as a kind of collector taking the tax from the shareholder.

Now, the question at once arises: Does the company that is acting as a collector hand over the tax that is so collected to the Crown? The answer is "no", because it has already done so by accounting in respect to its own liability.

. . . . . .

MR. FRANK HEYWORTH TALBOT testified on cross-examination as follows:

In my experience in income tax administration, extending over twenty years, the point at issue in this case, namely, whether or not the tax in question was paid by the company or paid by the shareholder, has never arisen and I doubt that it could arise. It has never been questioned in England that when tax is deducted the deduction constitutes a payment of tax.

Just a few weeks ago, I discussed the case of *Rex v. Purdie,* [1914] 3 K. B. 112, with the Judge, Mr. Justice Rowlatt and I am very familiar with it.

(Thereupon, the following excerpt from the *Purdie* case was read to the witness:

"Q. Schedule D levies a tax on profits made from trade. In this case the trade is done by a company and Mrs. Purdie says 'I am one of the part owners of the company'. How are we going to deal with income tax on profits made from trade when the trade belongs to a company? The answer is to be found in Section 54 of the Act of 1842. That says that a company shall make an estimate of its profits and gains considered on the amount of profits and gains before any dividend shall have been paid, and that all persons entitled to dividends shall allow out of such dividends as a proportional deduction in respect of the duty so charged. So that in effect the company is the taxpayer. There is, strictly speaking, no income tax on dividends at all. The company has to pay income tax on its profits as a company and having paid income tax, the result is there is less to divide among shareholders. That is what it comes to. Mrs. Purdie has, therefore, strictly speaking, never been charged with income tax at all in respect of her dividends from the company. What has really happened is that the company has been charged with income tax and is by so much the poorer, and has, therefore, to declare a smaller dividend. The company has been charged with the income tax and has to reimburse itself."

MR. KIMBALL: Now, my question, Mr. Talbot is, of course: How do you reconcile the views there presented with the view which you have given here, to-wit, the view which represents your opinion that the tax is on the shareholder with respect to his dividend?

That case involved a claim made by a married woman for repayment of income tax deducted from dividends paid to her. She relied upon Section 45 of the

Income Tax Act of 1842, which is now embodied in Rule 16 of General Rules of the Income Tax Act of 1918, and reads as follows:

> "A married woman acting as a sole trader, or being entitled to any property or profits to her separate use, shall be assessable and chargeable to tax as if she were sole and unmarried.
>
> Provided that—
>
> (1) the profits of a married woman living with her husband shall be deemed the profits of the husband, and shall be assessed and charged in his name, and not in her name, or the name of her trustee; and
>
> (2) a married woman living in the United Kingdom separate from her husband, whether the husband be temporarily absent from her or from the United Kingdom or otherwise, who receives any allowance or remittance from property out of the United Kingdom, shall be assessed and charged as a *feme sole* if entitled thereto in her own right, and as the agent of the husband if she receives the same from or through him, or from his property, or on his credit."

Her contention was that her husband was the person burdened with the liability in respect of the tax in question and ought to pay the tax. It was decided that her claim was well founded. While the judgment or disposition of the actual point at issue has been approved in later cases, the reasoning upon which it was based has been criticized by higher courts which later had occasion to consider it. At page 269 of the *Brooke* case, decided two years later, in the King's Bench Division, Mr. Justice Atkin said:

> "But I think it is fallacious to say that the individuals who receive income from which Income

Tax is deducted at the source are not chargeable with the tax. I think there is some authority for the Appellant's contention in the judgment in *Purdie v. The King.* The judgment in that Case, may be unassailable, but with the greatest respect I find it difficult to reconcile some of the reasoning of the learned judge in that Case with the reasons given by the noble Lords in the Case of *Ashton Gas Company v. The Attorney-General,* which does not seem to have been cited in *Purdie v. The King.* If the payee has not paid Income Tax by allowing the deductions, as by the appropriate Sections he is compelled to do, it is difficult to see how he escapes paying Income Tax on the net sum that comes into his hands."

At page 276 of the *Brooke* case, Lord Justice Scrutton says: "I am not at present satisfied that the reasoning in the *King v. Purdie* is consistent with the decision of the House of Lords in the *Ashton Gas Company.*"

The *obiter* statement of Mr. Justice Rowlatt in the *Purdie* case that ". . . in effect, the company is the taxpayer. There is, strictly speaking, no income tax on dividends at all . . . Mrs. Purdie has, therefore, strictly speaking, never been charged with income tax at all in respect of her dividends . . .", has thus been held to be inconsistent with the reasoning and holding of the House of Lords in *Ashton Gas Company v. The Attorney-General.* May I also observe that the *Purdie* decision was given very shortly after Mr. Justice Rowlatt was raised to the bench, and his reasoning may have been incorrect. The point under review could have been decided without saying whether or not there is strictly any income tax on dividends, and the decision, viewed apart from the things Mr. Justice Rowlatt said *obiter,* was right.

Corporations are not subject to any surtax except in the circumstance provided for by Section 21 of the Finance Act of 1922, as amended by Section 31 of the Finance Act of 1927. That section does have the effect of making certain limited liability companies—mostly private companies—answerable for surtax upon income that they fail to distribute, where, by not distributing, people were avoiding surtax. The effect of the Finance Acts of 1922 and 1927 is to make the company in such circumstances liable to pay surtax upon the individual shareholders. In the ordinary case there is no surtax as such imposed upon the corporation, as appears clearly in Section 38 of the Finance Act of 1927, which reads in part:

> "In the case of an individual whose total income from all sources exceeds a stated amount, at the rate or rates exceeding the standard rate in respect of any part or parts of his income in excess of that amount . . ."

The *Brooke* case and the *Hamilton* case, which I discussed on direct examination, involved ascertaining total income for surtax purposes by means of adding the tax withheld at the standard rate from the gross dividend to the amount of cash physically received. Subsection 2 of Section 38 of the Finance Act of 1927 which reads:

"The expression 'total income' in relation to any person means the total income of that person from all sources estimated, as the case may be, either in accordance with the provisions of the Income Tax Acts as they apply to income tax chargeable at the standard rate or in accordance with those provisions as they apply to surtax." "Total income" is precisely the same whether it is being calculated for surtax purposes or for purposes of income tax at the standard rate. When I return total income I do not do so with the view

of being charged again with income tax at the standard rate on that part which comes to me from dividends from which tax has been deducted. I have to render a statement of total income from all sources in order to be charged with income tax on my professional profits and charged with surtax on the whole thing, but not with a view to my being charged income tax at the standard rate on dividends, because I have already paid the tax on that by deduction.

So far as tax at the standard rate is concerned, the only collection by the Crown itself is made when the company pays tax on its profits. That is the spot at which the river debouches into the sea and at that point the river may contain the contents of numerous tributaries up in the hills. I use that illustration to make my meaning clear. That is the point at which the money collected in various ways as the stream is coming down actually goes into the National Exchequer. I have said before that the company, in paying tax upon its profits, does not pay as agent for the shareholders.

While Mr. Justice Rowlatt said in *Ritson v. Phillips*, 131 Law Times 384: ". . .He is not taxed on his dividends. The companies are taxed on their profits, not as his agents (as has been loosely said), though at his ultimate expense. There is no provision for the return of any of this tax to the shareholder save in the process of giving effect to deductions and reliefs. . . .", it is always dangerous to wrest a few lines from their setting and attempt to construe them without regard to the circumstances of the case in which they were uttered. Mr. Justice Rowlatt was a little careless in the use of his words. In my opinion he was thinking in terms of the making of direct assessments at the time he used those words, and when he said that the applicant in that case is not taxed on his dividends, what he meant, as is quite clear from the statement of the case, was that the shareholder is not

liable to any direct assessment on his dividends—it is quite clear that that is all there was in those words. He did not mean that dividends are not within the incidence of the tax at all.

The statement of Mr. Justice Rowlatt in the lower court in the *Hamilton* case that "a dividend is not a taxable subject-matter in itself" must be weighed after considering what the Superior Court which reviewed his judgment said on the matter. After his statement was made, the case was appealed to the Court of Appeal and heard by Lord Hanworth, the Master of the Rolls, and Lord Justices Lawrence and Romer. In the Court of Appeal, Lord Justice Lawrence says at page 234:

> "It seems to me, in those circumstances, that there is no room for the argument which was addressed to us, that the appropriate tax was a proportion of the tax which the company itself had paid in respect of the gains and profits out of which the dividend was paid. It seems to me quite plain, on the wording of Rule 20 that the tax appropriate to the dividend is the tax ascertained in the manner I have explained. As my Lord has pointed out, the taxpayer is the shareholder and, under this machinery, the company is made the collector of the shareholder's tax for the Revenue."

On page 235 Lord Justice Romer observed:

> "That being so, the only question remaining on the appeal is as to what is the tax appropriate to be deducted from a dividend when the company pays it. It is said by the Appellant that where a company has paid a tax to the Crown it is not appropriate, indeed it is most inappropriate, that when dividing profits among shareholders it should deduct from a dividend any greater sum than it has

paid itself to the Crown in respect of tax on these profits. That argument has frequently been addressed to the courts—at any rate, it was addressed to the House of Lords in the *Scottish Union* case. In reference to it, Lord Cave said this: 'It was pointed out in the course of argument that such a construction of the statute'—he was there dealing, I think, with Section 54 of the Act of 1842, and not with Rule 20 of the Act of 1918—'would lead to results which cannot possibly have been intended.' Further than that, it seems to me that there is a fallacy lying at the very root of the argument, and that fallacy is this. It treats the company not as a separate legal entity but as merely being equivalent to the aggregate body of its shareholders and treats the company when it pays tax to the Crown as paying tax on behalf of its shareholders. It has, however, frequently in recent days been pointed out by the Courts, contrary to the opinion entertained by Mr. Justice Astbury in the *Rover* case, that the company is one taxpayer and that each individual shareholder is another, and a separate taxpayer, on whose behalf the company deducts a tax when it pays a dividend, but on whose behalf it is not paying the tax when it pays its own tax to the Crown."

I prefer the observations of Lord Justices Lawrence and Romer on appeal to that of Mr. Justice Rowlatt whose decision in the court below they were reviewing. It is true that the Lord Justices affirmed Mr. Justice Rowlatt's order, but in my reading of their language they did not assent to every part of his line of reasoning, and in respect of his statement quoted above, I should say that the effect of their language goes to show that they disapproved of that particular statement. The *Hamilton* case was a super-tax case.

I am unable to find any inconsistency between the view I have expressed and the language of Lord Tomlin in the House of Lords in the *Neumann* case, reported in XVIII Tax Cases, where he says at page 358:

> ". . . It was never, I think, doubted that, under the Act of 1842, the profits of a business carried on by a company were taxable against the company under Schedule D, and were not taxable again, after distribution, in the hands of the shareholders under Schedule D or any other Schedule. At the same time, it was permissible to the company, under Section 54 of the Act of 1842, to deduct from the dividend the proportionate part of the tax paid to the tax collector, and the shareholders entitled to exemption from or abatement of Income Tax could, upon the footing of the deduction, obtain the necessary return of tax."

And later at page 362-3:

"I may say at once that, having regard to the view which I have expressed as to the general scheme and operation of the Income Tax Acts in regard to dividends, I am unable to accept the view that dividends, as such, are taxable under Schedule D. I do not think they are. I think it is accurate to say, as Mr. Justice Rowlatt said in *Purdie v. Rex,* [1914] 3 K. B. 112, at page 116: 'There is, strictly speaking, no tax upon dividends at all.' They are, however, under Rule 20 of the General Rules and Section 39 of the Finance Act, 1927, and apart altogether from Section 7 of the Finance Act, 1931, liable, where the dividends are made out of profits or gains charged on the company, to suffer deduction of a sum equal to tax at the standard rate on the gross amount of the dividends and, in such cases, the gross amount of the dividend is the Income Tax income to be taken into account, whether it be for

computing the amount of tax which the shareholder is entitled to have returned, or for fixing his liability to Surtax." It is important when construing such words, to have regard to the type of case he had in mind or the type of case he was there considering. I have previously stated that dividends are not taxable at the standard rate under Schedule D for the reason that they have already been taxed by deduction at the source. It is precisely with such a situation in mind that Lord Tomlin said:

> "I may say at once that, having regard to the view which I have expressed as to the general scheme and operation of the income tax acts in regard to dividends, I am unable to accept the view that dividends, as such, are taxable under Schedule D. I do not think they are."

When his Lordship assents to what Mr. Justice Rowlatt says in the *Purdie* case—"There is, strictly speaking, no tax on dividends at all"—he means simply that there is no provision for the making of any direct assessment upon the recipient of the dividend, and I say this because his Lordship goes on to say: "They are, however, under Rule 20 of the General Rules and Section 39 of the Finance Act, 1927, and apart altogether from Section 7 of the Finance Act, 1931, liable, where the dividends are made out of profits or gains charged on the company, to suffer deduction of a sum equal to tax at the standard rate . . ."

In that sense also should the following observation be construed:

> "It was never, I think, doubted that, under the Act of 1842, the profits of a business carried on by a company were taxable against the company under Schedule D, and were not taxable again, after distribution, in the hands of the shareholders

under Schedule D, or any other Schedule,"—there being five schedules for direct assessment.

The point is that the dividends of an English company do not come under any schedule for assessment, because they are not required to be directly assessed. They suffer their tax by deduction at the source. It is just this, that they bear tax; they are made to suffer tax; they are within the scope of the Income Tax Act, but they are not charged under any schedule—A, B, C, D or E—just because they are to be dealt with at the source and not to be the subject of direct assessment upon the recipient. I agree entirely with the following observation of Lord Warrington, at page 366, in the *Neumann* case:

> "In particular, I agree that dividends, as such, are not taxable under Schedule D, but that, where they are made out of profits and gains charged on the company they are liable to suffer deduction under the provisions of Rule 20 of the General Rules and Section 39 of the Finance Act, 1927, and that the gross amount is Income Tax income to be taken into account, whether it be for determining a claim for return of tax or for fixing the liability to Sur-tax."

Those words supplement admirably my view expressed on direct examination. I agree that dividends are not taxable under Schedule D, "but where they are made out of profits and gains, charged on the company, they are liable to suffer deduction under the provisions of Rule 20". Where they are made to suffer deduction, the recipient of the dividend has paid the tax deducted. With reference to Lord Wright's observation, at page 368, in the *Neumann* case that:

> "Rule 20 is, in effect, based on Section 54 of the Income Tax Act, 1842, with the substitution

of the words 'the tax appropriate thereto' for the words 'the tax proportionate thereto'. The scheme of these provisions, as I understand them, is to impose the tax on all the profits of the company at the source; if and so far as these profits have been so taxed, they are not liable to any further tax, other than Sur-tax, in the hands of the shareholder receiving the dividend. The shareholder and the company are, no doubt, separate entities; the company is not an agent for the shareholder to pay tax on the dividend, nor is the company the collector for the Revenue to deduct the tax from the dividend. The company is the taxpayer. . . . The Company is not bound, but only authorized, to deduct tax in paying dividends; whether it deducts or not is left to its discretion, because the profits once having been taxed in the company's hands, do not bear further tax—apart from Sur-tax—in the shareholders' hands. There is, in fact, only one profit, no new profit being created from the fact that the shareholder gets his share; the tax is a tax on the profits and not on the dividend. But, if tax is deducted from the dividend, the Acts have provided that it is to be at the standard rate of tax of the year of dividend, in order to avoid obvious difficulties which might arise because profits divided in one year may have been earned in other years. The provisions of Section 7 of the Finance Act, 1931, will be considered by me more particularly in connection with the cross-appeal.

"On a careful review of these provisions, I reach the conclusion that a shareholder is not separately taxable—I disregard Sur-tax—on a

dividend, as a profit individual to himself, under Schedule D, Case VI, as the Court of Appeal held, or at all . . . ."

I think one must construe it by reference to the whole of the facts then before him. I think also one may regard his views as summarized in the sentence, " . . . I reach the conclusion that a shareholder is not separately taxable on a dividend as a profit individual to himself, under Schedule D . . . ". Throughout this aspect of the *Neumann* case their Lordships were thinking in terms of the question: Can any direct assessment be made upon the recipient of this dividend? Is it a proper subject-matter for the making of any direct charge upon him? It is to that aspect that their observations are directed and when the whole judgment is read in the light of the commentary I offer, I think the conclusion will emerge very clearly that it was very far from their Lordships' intention to say that dividends, when they suffered deduction of tax by the dividend-paying company, were not made to pay income tax at all. The whole point was that dividends are not directly assessable to tax under Schedule D as dividends.

Where the rate at which the company pays tax upon its profits is either higher or lower than the rate at which it deducts tax from the shareholder's dividends, in a claim for repayment the shareholder is concerned only with the standard rate of tax prevailing at the date the dividend was declared payable to him. If the dividend is paid out in a year subsequent to that in which the company earned its profit and paid tax thereon, the rate at which the company paid tax to the Crown under Schedule D is no concern of the shareholder for the very good reason that the company did not pay to the Crown as agent of the shareholder. The shareholder claims his repayment by reference to the rate

at which the company has deducted from his dividend. The shareholder—and it is only with reference to him that my testimony is directed—bears tax in the amount that it has been deducted from his dividend, irrespective of what the company paid upon its profits. I have not been concerned in any part of my evidence with the position as between the company and the Crown. The shareholder, from whose dividends tax has been deducted, has not paid any the less because the company in accounting to the Crown upon its profits may have paid more or less than the amount deducted from his dividend. This is a matter which does not concern him. It is a matter with which, as a matter of practice, the Inland Revenue Department has no concern when it is dealing with him. He is out of pocket in the sum that has been deducted from his dividend, and it is that sum upon which his refund claim is based; however much or however little the company may have paid to the Crown. Indeed, in practice, a shareholder rarely finds it possible to discover how much his company has actually paid by way of tax. Certainly he is never asked to do so and there is no necessary relationship.

The evidence that I have been endeavoring to present is to the effect that when I have received a dividend of 100 pounds, less 25 pounds tax deducted, or a "free-of-tax dividend" of 75 pounds, I have paid tax in the sum of 25 pounds. The question whether I have paid 25 pounds to the Crown is one that just does not arise ever for consideration in English courts. The structure of our system does not permit it. I cannot conceive of such a question arising, but if it did arise the answer would be very easy. If I have paid tax I have paid it to the Crown because, according to our law and constitutional theory, no tax can be levied upon any subject except for the service of the Crown. The very word "tax" prohibits it. If I have paid an income tax

or if there has been deducted from me an income tax, that very fact that it is income tax shows that it is a contribution to the Crown.

In the illustration where the tax rate was the equivalent of 10 per cent. at the time the company's profit was earned and 25 per cent. in the later year when the dividend was paid out of those profits, the shareholder has undoubtedly paid 25 per cent. income tax by way of deduction, and, moreover the Crown does regard him as having done so. This hypothetical case is not very far from actuality within my own experience. During the years 1914, 1915 and 1916, when I was an Assistant Surveyor of Taxes, the rate on income tax in England rose in the space of three years from 2 pence in the pound to 6 shillings in the pound—a very steep rise. A company distributing a dividend in 1916 out of profits made in past years deducted from dividends at the rate of 6 shillings in the pound, although the profits out of which the dividend was declared were taxed to the company at a very much lower rate. The shareholder received communications or warrants from the company showing income tax deductions at 6 shillings in the pound, and the Inland Revenue Department, without hesitation, treated such a shareholder as having paid tax at the rate of 6 shillings in the pound on the amount of the dividend, and, moreover made repayments on that basis.

According to our view and practice, the question never arises whether, or to what extent, the company has accounted to the Crown for its tax. The whole point is that the dividend-paying company, acting under statutory authority, has made a deduction from the shareholders. The shareholder has suffered the taxes or paid the taxes and his only concern with the Revenue Department is to prove that he himself has suffered the deduction. The Revenue Department

makes repayments without any regard whatever to the amount of the tax paid by the company. As between the company and the shareholder, the tax paid by the company on its profits is sometimes very much more and sometimes very much less than that deducted from the dividends in the year in which they are paid. The question of whether a shareholder has suffered or paid tax when the deduction is made from him is not an open question in my view and in the eyes of our law, whatever may be the position as between the shareholder and the company.

If we assume a situation where the company paid tax at the rate of 10 per cent. and thereafter paid a dividend in a subsequent year when the rate was 25 per cent., the company would, according to English law, deduct 25 per cent. from the dividends. Nothing whatever is paid into the Crown's coffers with respect to the dividend, because there is no new *ad hoc* assessment upon the dividend. The shareholder is considered as having paid tax to the extent of whatever has been deducted from the sum paid to him by way of the dividend, 25 per cent. in the hypothetical case.

Q. Mr. Talbot, I understood you on yesterday to take the view that you do because you stated that the burden was ultimately borne by the shareholder; is that correct?

. . . . . .

A. My testimony was to this effect, according to my view, according to my reading of the English statutes, and according to my reading of the English decisions, and according to my experience extending over a number of years in the Inland Revenue Department, when tax is deducted from a dividend or when a dividend is paid free of tax, the shareholder suffers and bears and pays the amount of tax appropriate to the dividend.

In the hypothetical case, if we assume a profit of 1000 pounds on which the company pays a tax of 10 per cent. leaving 900 pounds, after the company has paid a gross dividend of 1000 pounds, or a "free-of-tax dividend" of 750 pounds, there would be left in the company's coffers a surplus equal to the difference between the 10 per cent., which the company paid and the 25 per cent. which it deducted from the dividend, or 150 pounds. It is true that this 150 pounds might thereafter be paid to the shareholders, or if the company were to be wound up with nothing further, it would come to the shareholders.

The tax is in my view quite clearly borne by the shareholder at the moment that he receives payment of his dividend, because, although there has been declared in his favor a dividend of 1000 pounds, and as such he is made liable for the surtax, to use the conventional expression with respect of 1000 pounds, he has received in cash no more than 750 pounds. The difference between that 750 pounds and the 1000 pounds represents the income tax. Regarding that particular operation, which is the operation whereby he receives his income, he has in my view unquestionably suffered and borne and paid 250 pounds tax. Now, it may very well be by reason of the operation of other circumstances, by the accidents of transfers, variation in rates of taxes, in the movements in the market, and improvements in the general industrial and financial circumstances, his shares may be ultimately regarded as worth more, so that he obtains on an eventual distribution of the assets of the company more than the par value of those shares. In my view, which I do not hesitate to express, those considerations have no bearing whatever on the question of whether or not at the time he received the dividend of 1000 pounds he bore and suffered and paid a tax thereon.

The decision in the *Dalgety* case, XV Tax Cases, at page 216, is one with which I am very familiar, and upon which I have to advise not infrequently in England. It has no bearing whatever upon the problem here at issue. The whole question there turned upon construction of a particular relief section, Section 27 of the Finance Act of 1920, providing for relief where United Kingdom income taxpayers have also paid tax to one of the Dominions. The operation of any general principle of income tax law was not in issue. The question was whether or not, when a company has paid, by virtue of a direct assessment, tax upon an amount of profits including a sum of debenture interest, it has any the less paid the tax on that sum because it is entitled to recoup itself when it does pay the interest to the debenture holders.

The House of Lords construed the expression, "paid by deduction or otherwise." No question of the words "by deduction" came into consideration, because this was plainly a case in which the company paid tax, the check being handed directly to the Collector of Taxes.

The Crown contended that the meaning of the expression "paid" in Section 27 must be limited to tax that has not only been paid but also ultimately borne by the company making the payment.

The House of Lords said, "No, this is a relief section." An income tax act must be construed according to its letter. The plain term "paid" must be construed according to its natural tenor, and the company had paid the tax to the Collector; and none the less so, because by virtue of some other operation later it is in a position to pass on to its debenture holders the tax appropriate to that debenture interest. In the *Dalgety* case the Court simply looked to the fact that a relief section was involved and to the operation whereby the

company paid tax directly to the Collector—it did not concern itself and, indeed, it said that it was not entitled to concern itself with what might happen at a subsequent date when the company would find itself in the position to pass on, by deduction of tax from debenture interest, to some other person or persons some part of the tax that it had paid.

Applying the principles enunciated by the House of Lords to a simple illustration:

A company has a profit of 1000 pounds and an assessment is made upon the company under Schedule D in respect of that profit. The company pays a tax of 250 pounds. Assuming that the rate is 5 shillings in the pound—by virtue of that assessment. What the House of Lords said in fact in the *Dalgety* case was: that operation having been performed, the company has undoubtedly paid the tax, and it has none the less paid 250 pounds tax because at some later date it finds itself in the position to make somebody else bear the burden of that tax. The question was one of construction of the actual tax-relieving section and that is the whole substance of the *Dalgety* case. No question arises of what takes place on the second operation whereby the company makes a deduction from its shareholders or its debenture holders. Unquestionably at the date which a company accounts to the collector for tax charged upon the assessment based upon the company's profit it has paid the tax. It is a fact that when the decision was rendered in the *Dalgety* case, the company had recouped itself in respect to the tax on the 55,000 pounds by deducting from the interest which it paid to the debenture holders.

Let me make this quite clear. Our law is so curiously framed that to the mind of the lawyer not accustomed to the operation of the principle of deduction of tax at the source, it must all seem very strange. Regarding the position, taking one year with another, and

looking over a series of years, long series of years, and income tax has been in operation in our country for a very long period of time, as you know, taking the whole period of years, the result is that the Crown gets the right amount in the aggregate. Indeed, the Crown gets in one year or another, in the long run, all the "tax appropriate" that has been deducted from dividends paid by the company. The Crown does not necessarily get flowing into the Exchequer in any particular year an amount exactly equal to the aggregate amount of tax that in that year has been deducted by the company in paying its dividends. That would not be so because you have a variation in the tax, and you have a difference between the method of computation of profit prescribed by the Income Tax Act, and the method of computation of commercial profits the company itself employs in determining how much it has to distribute as dividends, in that particular year, and you will not get that exact and precise coincidence between the aggregate of tax deducted and the aggregate of tax paid by the company upon direct assessment. Over a long period of time the Crown is satisfied that they get all the tax on the full dividends or they would very speedily, and having served the government and having advised on these matters for some time, I may say they would very speedily take steps to see that they amended the law if it were otherwise. But they are satisfied that, one year or another and over a series of years, they get the tax. One year the rate of tax will go up and the Exchequer will lose a little the following year, and the next year it goes down and the Exchequer gains. Possibly the Exchequer is still out of pocket to some small extent because the rate of tax now is higher than it was in 1914. But it is impossible to say that that is so, because it is noticeable at the time at which the rate of tax, the standard rate of tax, was from six shillings to five shillings and four and six pence, and

four shillings, there was a period of prosperity in England. Larger profits were being made than in earlier years. The Crown was satisfied that they had not suffered any loss worth mentioning. Everybody in England recognizes that the position that arises from the decision in the *Dalgety* case is an anomalous one. Everybody recognizes that the Dalgety Company and several other companies in London similarly placed, are obtaining income tax relief by virtue of the operation of the particular words of the statute at a rate that is in excess of what, upon the moral and economic standard, they ought to get. But that does not worry us very much in England. Our courts are always concerned to construe in strict and literal sense language under the tax act, however, anomalous the result may be. The result of the *Dalgety* case was that in that particular instance by reason of the literal text of the section, it was possible for a company to obtain an advantage that certainly was not contemplated by the people in the Inland Revenue Department who were responsible for framing the provision now incorporated in Section 27 of the 1920 Act. Now, as I have said, that was the effect of the language used, and the taxpayer must have the advantage. They get an advantage in the light of the manner in which the courts have decided the question, not an advantage which would have been provided if the result of the *Dalgety* case had been foreseen.

In respect to the hypothetical case where the company has profits of 1000 pounds and the tax rate when the company earned the profit was 10 per cent., and when it paid the dividend the tax rate was 25 per cent., the only amount that passes to the Exchequer is 100 pounds. If we reverse the situation to one where the tax rate is falling, you will have 250 pounds going into the Exchequer and only 100 pounds paid by the shareholder; and my belief is that this was the situation in

the present proceeding. The companies accounted for more tax to the Exchequer than was deducted from the shareholders.

With reference to the question of whether or not there are two taxpayers, I do say there are, and when I say that, I am supported by judicial authority. I rely upon the observation of Lord Justice Romer at page 235 in the *Hamilton* case: "It has, however, frequently, in recent days been pointed out by the courts contrary to the opinion entertained by Mr. Justice Astbury in the *Rover* case, that the company is one taxpayer, and that each individual shareholder is another and separate taxpayer."

Returning to the hypothetical case put to me, in my view and in the view taken by the Inland Revenue Department, 100 pounds or whatever it was of tax has been paid by the shareholder who received the dividend. It is impossible for me as an expert in English law to answer the question as to whom that tax was paid, except by reference to the general principle of constitutional law in the United Kingdom. The question as to whom it is paid is one that has never arisen in the United Kingdom and I can only say that the tax deducted was the tax paid, and paid by the shareholder. If tax of 100 pounds is paid by the company on its profits in the case put, that is the only sum which goes into the coffers of the Crown.

(Thereupon the following colloquy took place between the presiding Member of the Board and the Witness):

THE MEMBER: . . . I have a question that I would like to ask. How is it, Mr. Talbot, that you say with respect to that 100 pounds of tax that the corporation is the payor in the first instance, or the corporation does not pay it as agent for the stockholder, and that the stockholders are likewise the taxpayers with respect to the same 100 pounds.

THE WITNESS: Not with respect to the same 100 pounds, your Honor.

The company is the taxpayer with respect to the 100 pounds tax that becomes due to be paid under the assessment made under Schedule D, upon its profit of 1000 pounds. There the company is the taxpayer. The profit is a trade profit, and the tax becomes due to be paid by virtue of a direct assessment under Schedule D made upon the company. That is one thing. The second thing, according to our law is something entirely different, which is the 1000-pound dividend, which is the income of the shareholder. It is paid out by the company to the shareholders and by the operation of our scheme the payment of the dividends by a company operates in relief of the company in respect of its personal burden.

THE MEMBER: Yes, but the only tax that finds its way into the coffers of the Crown is the 100 pounds, the same 100 pounds?

THE WITNESS: The same 100 pounds, the 100 pounds directly assessed.

I wonder if I could put it in this way, to use a very simple illustration: Suppose that our law although designed to effectuate what it does effectuate had been framed in a somewhat different way. Suppose the company had been authorized to deduct a tax on payment of a dividend, and had been required to account specifically to the Crown for the tax so deducted, and it had been provided that the company should be by so much relieved of its own tax burden. Obviously, there would be a duplication of tax if a company earning 1000 pounds of profit were required to pay 250 pounds of tax on that profit, and the shareholder receiving that 1000 pounds profit as a dividend were required to pay another 250 pounds upon that dividend, you would have the position of 500 pounds tax being paid upon the 1000 pounds of profit.

Now, our law might have been framed in this way: "A company making a profit of 1000 pounds pays a tax on 1000 pounds, 250 pounds. A company paying a dividend shall be entitled to be relieved of its own burden of tax in respect of any dividend so that it shall ultimately bear tax only upon the amount of profit not distributed. A company paying a dividend shall be entitled to deduct tax thereon, but shall be held accountable directly for the tax it so deducts." If that had been the law you would have had this operation: A company pays tax on 1000 pounds of 250 pounds. The company distributes a dividend of 1000 pounds and deducts tax from the 1000 pounds of 250 pounds; and it hands that 250 pounds over to the Crown. The Crown has now received 500 pounds, and the company makes a claim against the Crown for repayment of the tax it has paid on its own profits before they had been distributed upon the ground that they were now being distributed, and the company is entitled to be relieved of its burden. If, of course, that had been provided by our statute, you would be placed in exactly the position in which you are now placed.

But, it would be cumbersome. The same result is reached by providing that when the company does distribute its dividend, it shall be entitled to deduct the tax and retain it. The scheme is framed in this way in order to secure this result; that the company shall be made to bear the tax ultimately upon that part of the profit that is not distributed, and so as to make the shareholders bear the tax on the distribution. Under the present law, or the British Income Tax Act, the company is never entitled to recover from the Crown any portion of a tax which it has paid upon its profits. The scheme is to enable it to recover from its shareholders, thus passing on the burden; and to avoid having a double process of account, the company effects recovery in that way.

It is not considered that a tax has been paid or borne by a shareholder except to the extent to which a dividend is paid to him and the tax deducted therefrom. The difference as I see it between our English conception and the American conception is that we regard the dividend received by the shareholder as an income quite separate and distinct from the company's profit. We regard the company's direct assessment as being an assessment upon the company's trading profit. We regard the shareholder's income as being an unearned income or yield on his investment—something quite different. Subject to certain limitations as set forth in Section 23 of the Finance Act of 1924, a company might get relief on the ground of an error or mistake in the return made by the company in respect of its profits.

With reference to the statement of Lord Justice Lawrence in the Court of Appeal in the *Dalgety* case at page 238, that:

> "The Company has in the natural and literal sense paid both the United Kingdom Income Tax and the Dominion Income Tax. No one else has paid or become liable to pay both these taxes, and no one else can claim relief under the relevant Sections. The company is not bound to pass on this belief to the debenture-holders. There is nothing in the various Acts to require the Company, as a condition of obtaining relief, to show that it will ultimately have to bear the burden of the United Kingdom Income Tax which it has paid and from which it claims relief. The legislature has not provided any means for enabling the taxing authority to ascertain on whom the burden of the United Kingdom Income Tax paid by the Company will ultimately fall, and in my opinion the obvious inference to be drawn from the absence of any such provisions is that the taxing authority is not concerned with that question.

> "For these reasons I am of opinion that the contention of the Crown that 'paid' means 'ultimately borne' is not well founded."

My first observation is that those words, in common with the rest of the decision of that case, have no bearing whatever upon the case upon which I have been asked to advise the Board. The question in issue in the *Dalgety* case was whether or not the expression "paid" in Section 27 of the Finance Act of 1920 should be limited in its meaning so that it applied only to those cases in which the claimant had not only paid but also ultimately borne the tax. The Court in effect said that Section 27 was a relief section which must be strictly construed according to the natural import of those words; that the company had paid the tax; that it was not concerned to see whether or not the tax was being passed on to any other person or whether the company ultimately bore the tax; and that it was satisfied that the company had paid income tax within the meaning of Section 27, and consequently the claim succeeded. I entirely agree that the company paid the particular tax under consideration in the *Dalgety* case. Indeed there is no answer to the proposition. The Crown did not dispute the proposition that the company had paid the tax. I conclude that the language of Lord Justice Lawrence set out above was *obiter dictum,* which, in the light of the text of the case, was immaterial to the substantial issue before the Court. The House of Lords was concerned in the *Dalgety* case with deciding the question of whether or not the Crown was right in contending that the word "paid" in Section 27 of the Finance Act of 1920 should be limited, or should be construed as limited in its meaning to "tax paid and ultimately borne by the company". The House of Lords decided against that construction. Neither the House of Lords nor any inferior court was called upon

to say whether or not the expression, "tax paid by deduction" would or would not cover the case in which the tax is deducted from a dividend paid to a shareholder. I cannot agree that the Court was in any way concerned with the expression "paid by deduction or otherwise". The sole question was whether "paid" meant "paid and ultimately borne" or "paid" *simpliciter;* and the Court said "paid" must be construed according to its ordinary and natural meaning. It did not say that the expression "paid by deduction" must be construed to mean "paid" in a direct sense of handing over the cash. If you put it to me as to whether or not the House of Lords in this case did pass upon the construction of the expression "paid by deduction" my answer is in the negative.

With reference to Lord Justice Sankey's statement on pages 240-1 of the *Dalgety* case, where he says:

> "The Appellants say: We have paid because we have in fact, to use a neutral word, handed over the amount of the tax to the Crown. The Crown say: You have not paid because, although you have handed over the amount to the Crown, you have deducted it from the debenture interest and you are not entitled to the relief claimed because you have not borne the burden.
>
> "The real question after all is the meaning of the word 'paid', upon which the meaning of the word 'income' may shed some light. . . . "

And his further statement on page 241:

> "What then is the meaning of the word 'paid'. It must be given its natural and primary meaning rather than an artificial and ultimate meaning. If, for example A and B owe C £10 and A hands over a £10 note to C, A has paid C and none the less because he can get back £5 from B.

So too a person has paid Income Tax although subsequently to the payment he may be entitled to get it back because he was not liable to pay the particular amount. In such a case the fact of payment is one of the conditions precedent to relief."

I repeat that the precise point in that case was whether or not when a company has paid income tax upon a direct assessment made upon it, it has none the less paid such tax because, by the operation of certain provisions of the Income Tax Act, it is enabled to recoup itself at the expense of its shareholders. That is made clear by the passage on page 240 just put to me. I entirely agree that when a company pays tax made directly upon it, it has paid tax within the meaning of the income tax acts and it is none the less true to say that when a company, having paid its tax to the Crown, declares a dividend and deducts income tax from that dividend, the shareholder receiving the dividend has also paid the income tax so deducted. There is nothing in the decision of the House of Lords or any inferior court in that case that lends any support to the proposition that when a tax is deducted from a shareholder the shareholder has not paid the income tax so deducted within the meaning of the Income Tax Act. I entirely agree with Lord Buckmaster's observation, at page 245, of the *Dalgety* case that:

"Taking the words in order there can be no doubt the Company did pay 'United Kingdom income tax' on the full amount. The Income Tax charged 'in accordance with the provisions of the Income Tax Acts' was charged on the whole of its profits and gains. Nothing less would have been accepted and no other person was liable to make the payment. But it is urged that even if this be

accepted, to the extent of the debenture interest, the payment was made on behalf of the debenture-holders. To this extent that is true, namely, that, having paid, the Company was entitled to deduct the tax from the debenture interest, and, to the extent of that deduction, it was the debenture-holders' tax that was thus discharged. But it was not the debenture-holders who made the payment, but the Company."

I would like to add only that there he is talking of payments made by the company to the Collector of Taxes. He is saying that when that payment is made by the company to the Collector, it is the company and not the debenture-holders who are making that payment. He is not saying that when the interest is paid to the debenture-holders and income tax is deducted therefrom the debenture-holders are not paying the tax deducted.

Q. Unless that be implicitly inferred from his statement that the company paid?

A. That is a matter of argument, and if you take as a whole my testimony on the witness stand on the point, I say that is not implicit.

Q. In other words, if I understand you correctly it is your position that there are two taxpayers on the portion of the company's profits which are distributed as dividends?

A. There are two taxpayers distinctly, and I have cited my authority on that.

Q. I just want to make sure that I understand your position.

A. I am sure that you understand it perfectly. That is my position exactly.

I respectfully adopt every word and syllable of Lord Warrington's observations in the *Dalgety* case, on pages 249-50, that:

"The Respondents' contention is a simple one. The Company is a person who has paid or is liable to pay United Kingdom Income Tax on the part of his income, viz. in this case the trading profits earned in the Dominions and has also paid Dominion Income Tax on the same part of his income, and is therefore entitled to relief from United Kingdom Income Tax payable on that part of his income. Reading the words of the statute in their ordinary and natural meaning there is no answer to this contention. But the Crown says the words are not so to be read. The Respondents have deducted from the interest payable to the debentureholders the United Kingdom tax in respect of that interest and it is said they have thus recovered a corresponding portion of the United Kingdom Income Tax paid or payable by them in respect of the profits from their Dominion trade and ought not therefore to be treated as having paid United Kingdom tax on the whole of such profits. Now this view obviously requires that the words of the Section be read in a sense other than their ordinary and natural meaning, as for example, 'paid' must be read 'paid and ultimately borne'. I can find nothing in the other provisions of the Act to indicate that the ordinary construction would bring about a result not contemplated by the legislature, and I therefore see no ground for the application of the principle of construction adopted in the well-known case of *Colquhoun v. Brooks*, 14 App. Cas. 493, in which the absence of machinery to give effect to the Act, if wide words were used in their ordinary and general meaning, was held to be sufficient to justify a more limited construction.

"I agree, therefore, with the learned Judges of the Court of Appeal that the words of the Stat-

ute ought to be construed in the ordinary and natural sense and that the Respondents have made out a claim to relief calculated on the whole of the profits brought into charge in respect of which Dominion Income Tax has been paid. With all respect to Mr. Justice Rowlatt, I cannot adopt his view that income in this Section means only so much as exceeds the amount of the interest paid out of it. The Company pays tax on the whole of that part of its income which is also subject to Dominion Income Tax and none the less that on making a payment of interest payable out of its profits and gains it deducts, as it is entitled to do, the tax payable by the recipient. The Company is not accountable to the Revenue for this tax nor does its right to deduct it depend upon it having paid its own tax on its profits and gains (see Rule 19 of All Schedules Rules)."

He makes it quite clear, using the very words that I myself used a little earlier referring to the text of this case, that the question before the Court was whether the word "paid" in Section 27 of the Finance Act of 1920 had to be construed to mean "ultimately paid and borne." He goes on to use an expression which gives the fullest support to my view as expressed earlier in my testimony when he says: "The company pays tax on the whole of that part of its income which is also subject to Dominion Income Tax and none the less that on making a payment of interest payable out of its profits and gains it deducts, as it is entitled to do, the tax payable by the recipient."

I dissent from the use of the expression "that very tax" in the statement put to me that, "the decision in the *Dalgety* case is to the effect that within the meaning of the relief section, for relief from double taxation on account of Dominion tax as well as United Kingdom

tax, a company is deemed to have paid the tax to the United Kingdom within the meaning of the Section, even though the company has deducted from the debenture-holders that very tax, " because the company does not deduct from its debenture-holders "that very tax" which the company has paid into the National Exchequer. As was pointed out in the *Hamilton* case, the company pays its own tax and the shareholders and debenture-holders pay their own tax. The company pays its tax by sending a check to the Collector of Taxes, and the debenture-holders and shareholders pay their tax by submitting, as they must do, to a deduction. Apart from these observations, I agree that the statement of the effect of the decision in the *Dalgety* case just put to me is accurate. My objection is to the proposition put to me that the shareholders pay the company's tax. They do not pay that—they pay their own tax when it is deducted, and the company pays its own tax when it pays it to the Crown. As to whether or not any of the statements in the *Dalgety* case are sheer *dictum*, I hesitate to label any observation of the House of Lords as "sheer *dictum*" because, in England, we are accustomed to treat with the profoundest respect every sentence uttered by a law Lord or the Lord Chancellor. I agree that some statements of the Court were not directly upon the issue before it. Further, I say, the substance of the decision in the *Dalgety* case has no bearing upon any issue before the Court in this instance.

In no narrow or literal sense is it right to regard the company as the Collector of Taxes for the Crown, although various Judges have used expression indicating such a view. It is a helpful concept in certain instances to regard the company as a collector for the Crown when it deducts taxes from a dividend, but there is nothing statutory in that view. It is just one of the devices we are accustomed to employ to render the

metaphysical more easily comprehended in a world of reality. It is not right to describe the company as paying its income tax to the Collector of Taxes as agent for the shareholders; that view has been shown to be ill-founded.

On page 361 of the *Neumann* case it is stated:

> ". . . Thus, the deduction permissible from the dividend clearly had no relation to the figure of tax payable by the company to the Revenue, though there was still no obligation on the company to account to the Revenue for what was deducted. The deduction, in fact, was only part of a system by which was measured (1) the extent of the shareholders' right to have exemption or abatement, and (2) the liability of the shareholders to Sur-tax."

I concur entirely with that statement subject to one comment, that where his Lordship speaks of the extent of the shareholder's right to have exemption or abatement, he is speaking of the shareholder's right to obtain a repayment of income tax upon the ground of exemption or abatement.

The method of collection of taxes in the case of the corporation is by direct payment of tax to the Collector of Taxes while from the shareholder in respect of his dividends, the method is by the process of deduction. Both are taxpayers—the corporation with respect to profits or gains in the shape of trading profits, and the shareholder in respect to the dividends on the holding of shares. Each is a taxpayer and bears an income tax, and the same income tax. By that I mean there is not a corporation income tax upon one and a personal tax upon the other. It is a single income tax. As I see it, and as I know from many years of personal experience, the Inland Revenue Department see it, and, as I read the decisions, the Courts of England see it, that is the true view.

Q. What . . ., Mr. Talbot, [is] your judgment on this question: There is nothing in either the written or the unwritten law of Great Britain which would have prevented Parliament, had it so desired, to have collected, as it does collect, in the illustration put 100 pounds, and later when the corporation declared a dividend of 1000 pounds gross, to have provided that 20 per cent., I mean 20 pounds rather than the 10 should be deducted from the dividend, and that the corporation at that time, for the second time, should pay into the Crown treasury another 10 pounds, thus carrying out the principles which you have enunciated of collection at the source—I say Parliament could have taken not merely the 100 pounds in the first instance, and it could have taken another 100 pounds in the second instance if it so desired?

A. Yes, I quite agree that such a method would have been possible, although, on technical grounds upon which the Court would not want me to venture—I think that such a method would have been somewhat cumbersome. I say I see the purpose, and I think what you are putting to me is in substance the sort of thing I was suggesting just now was proposed by many people; the income tax going into the treasury year by year being the exact amount deducted from dividends. But it has to be remembered, sir, that when we started our income tax we were content with a very small amount. The rates were low, a few pence in the pound; in fact it amounted to only one or two per cent., and the rates remained pretty stationary from year to year. The framers of the enactment quite clearly took the view that it did not matter, if you had the tax coming into the Exchequer in due course. The rate of tax being fairly constant and very small, there was really nothing in it; the difference was too small to bother about.

I have over there a copy of the Income Tax Act of 1806, and it is interesting to observe in that Act of 1806

the language of the rule that was the forerunner of the present Rule 20 in the Income Tax Act of 1918, is in almost the identical language in which it stood in 1806 when the rate was very small, and not liable to much fluctuation. Consequently, it did not matter very much. We got used to the administration of the income tax on these lines decade after decade, the rate continuing to be small prior to the war. It never had exceeded 1 shilling and 3 pence in the pound, within my own recollection, before the war, and there was very little variation from one year to the next. A variation of 1 shilling to 1 shilling and 3 pence was considered a very violent fluctuation in the rate. But I do remember a variation in one year from 1 shilling and 2 pence to 1 shilling and 3 pence. In those years the variations in rates were too small to make it worth anybody's while to bother about modifying a system that had been working for the greater part of a century, and working quite well.

We are a very conservative people, and in point of fact I might observe this that it is a matter of utmost difficulty to persuade our Parliament to make any modification of income tax law. I think that I break no confidence when I say that our Inland Revenue Department has the greatest difficulty in inducing the Chancellor of the Exchequer or the Financial Secretary to the Treasury to father legislation designed to improve our income tax laws. It could have been done in the way that you say. It was not done probably because it did not seem worthwhile when we had got used to the working of a system which is working very well. But it could have been done.

Q. Apparently, I still have not made my point clear. I want you to please eliminate for the purpose of this question such variations of rate, and assuming a constant rate, and I ask you again to return to our old

illustration of the 10 per cent. rate on the 1000 pounds profit.

Now, that 100 pounds is paid into the treasury in the year the corporation makes its profit. Now, as we know, and as you have stated, when the corporation later declares a dividend a dividend on that 1000 pounds profits, it deducts therefrom 100 pounds. Now, the question is this, there is nothing in the written or the unwritten law of Great Britain that could have prevented Parliament had it so desired from providing that at a later date when it paid the dividend of 1000 pounds gross, requiring the deducting from the dividend, not the 100 pounds which it had paid as a tax but another 100 pounds as well.

A. Oh, yes.

Q. Another 100 pounds as well, and requiring the company at that time to turn in another 100 pounds to the treasury?

A. There is nothing in the written or the unwritten law of the United Kingdom that can fetter the authority of Parliament. The King in Parliament is the supreme legislative authority, and it cannot be controlled by even its own precedent enactment. The British Parliament could, if it chose to do so, impose an income tax of 101 per cent. upon income. But whilst there is nothing in the constitution nor the law to prevent the imposition of such a tax, there is a public opinion, and there is an electorate that would have had quite a good deal to say if Parliament attempted to extort too much; and likewise there is a public opinion and electorate which would have a good deal to say if they were to attempt to take an unfair toll of income tax from a large body such as the shareholders in United Kingdom companies.

Expressing it in a very loose sense, what must have been in the Parliamentary mind was a desire not to tax the same income twice, but I should prefer to put it in

this way: the true view of our tax, and the intention of Parliament in relation thereto is this: That the income tax that is charged upon our corporations is in no sense a corporation tax, or corporation profits tax, or corporation income tax at all. It is an income tax upon all income, applying alike to individuals and to corporations. The principle is: Income tax is collected in the first instance from every corporation making a profit. When the corporation distributes the profit in the form of a dividend, the tax is not to be paid a second time, as it would be if the tax of the company were a corporate tax, and the tax of the individual were a personal tax. The tax is passed on. The company is relieved from its burden of income tax to the extent of the tax on the dividends paid and the shareholders bear that burden. Their burden is the income tax upon the dividends. The English income tax is entirely different in its principles and its structure from a corporate tax measured by the income of a corporation. It is an impost of the same nature and quality in relation to the income of a corporation as in relation to the income of an individual. Had there been an imposition of the second burden as just suggested to me the result would have been a tax of a nature entirely different from that now in effect. We are really levying not one tax on the corporation, and another tax, a super-tax, as a personal tax on the individual shareholder. That notion is entirely alien to our concept.

We have not now a corporation profits tax at all. We had one from 1920 to 1924, but it was the subject-matter of a quite separate and distinct enactment. The scheme did not work well. It was first imposed at the rate of a shilling and was later reduced to 6 pence; and then it was repealed altogether. If we had a corporate tax upon the corporation, and a personal tax like the surtax upon individual shareholders in respect of their dividends, I should have agreed with the proposition

that there was a Parliamentary desire not to tax the same income twice.

What I am saying is that any such concept as that is alien to the fundamental principles of our income tax system.

The shareholder in computing his surtax does not take into account the entire amount of the company's profit. He has no interest whatever for surtax purposes or income tax purposes in the amount of the company's profit as such. He is interested in, and is required, to return for surtax purposes only such income as comes to him in the form of a dividend, upon which dividend he is required to pay tax at the standard rate in the first place by deduction and at an increased rate called surtax by special and direct assessment. The reason why the shareholder is required to include the gross amount of the dividend for surtax purposes is to be found in Section 38 of the Finance Act of 1927 where it is provided that there is one and only one income tax in the United Kingdom from start to finish. I am in danger of repeating myself, but there is only one tax. It is divided into two portions, the standard rate portion, and the surtax portion. The standard rate portion is collected from all persons, whether natural persons or legal persons, statutory persons like companies. The upper portion of the income tax, the higher rate, the surtax, is charged only upon certain individuals, a very small class of individuals indeed. The tax as to the income tax portion is collected by the process of deduction at the source, and the balance of it, the surtax portion, is collected by the process of direct assessment. Parliament could have very well have charged all corporations with a rate of tax of 12 shillings and 6 pence in the pound. If they had done so, it would have meant more payments and repayments. What it did was to strike a

mean rate, and collect from the comparatively few people who are liable at the higher rate by the process of direct assessment upon the individual. So far as the surtax of the shareholder is concerned, there is a separate assessment made upon him and he pays that tax directly by a check sent to the Special Commissioners of Income Tax, from whom he receives a receipt.

It is true that Rule 20 of General Rules is permissive according to its construction, but the general feeling is that there was little need to make it more than permissive on the ground that if you give a man a statutory right to take something from somebody else he is either going to take it or make the other person a gift. If it had been mandatory, you could not have prohibited a company from making a gift to its shareholders under proper authority.

Q. Don't you agree, Mr. Talbot, that it is highly fictional to say the shareholder pays the tax in respect to his dividend when the company declaring that dividend declares it tax free?

A. Fictional?

Q. Yes.

A. Well, I think I must ask for a definition of "fictional" because maybe there is a difference in the meaning of the word here.

Q. Perhaps you would prefer the word "notional".

A. That is a word in more common use—or "constructive". "Constructive" is the more accurate, but fictional, notional or constructive or not, there can in the light of our authorities be no doubt that, in English law, the dividend paid "free of income tax" is for all the purposes of the English Income Tax Acts a dividend of such an amount as after the deduction of income tax at the rate appropriate thereto amounts to the net sum paid.

Q. That is sheer fictional or notional, you would say?

A. That is argument. I have expressed the legal position in the United Kingdom. Of course, you understand that I am not in a position here to argue with learned counsel as to the use which should be made of my testimony. But whether it is fictional or notional or constructive, it is beyond any sort of question according to the law of the United Kingdom, as construed by the courts, that there is no difference between "free-of-tax dividend" and a dividend paid gross from which the income tax is specifically deducted.

The decision in the *Samuel* case, involving a "free-of-tax dividend", was based upon the authority of the decision of the House of Lords in the *Ashton Gas Company* case in which the true character of a "free-of-tax dividend" was determined, not upon the proposition that a company paying tax upon its profits pays tax as the agent of the shareholders. The decision is sound in substance, but the supplementary reason cannot be supported in view of what has since been said regarding the agency proposition.

Q. Mr. Talbot, I call your attention to Section 32, subsection 2, of the Act of 1918, wherein the following language appears—I might say parenthetically that was one of the sections that you called to our attention upon your direct examination as supporting your view that the tax was the shareholder's tax.

A. Yes.

Q. "If any such person is charged to tax under any schedule, and has paid that tax, or has paid or has been charged with tax by deduction or otherwise, he shall, on a claim being made to the Special Commissioners, and on production to them of the receipt for his annual payment, and proof of the facts to their satisfaction, be entitled to repayment of tax on the amount thereof at the appropriate rate."

My inquiry is: Why was it, if you know, that in that subsection 2 Parliament was not content to just leave it, "any person who has paid the tax", but inserted the additional words, "or has been charged with tax by deduction or otherwise"?

A. I think it must be regarded as due to the exercise of a little extra caution in the use of language so as to cover every conceivable contingency,—"has paid that tax", or "has been charged with tax by deduction or otherwise",—you see these sections were written in their original forms at various times. A form of language that seems good to one draftsman may not be thought quite so good by another draftsman. When these people who consolidated the existing enactments in 1918 undertook their work they felt bound to leave the original language intact insofar as it was possible to do so. Consequently, one does find curious little variations. In Section 29 you get the phrase "has paid that tax", and in Section 32 you get has "paid or has been charged with tax by deduction or otherwise". That Section, No. 29, of the Income Act of 1918, is drawn, as you will see from the marginal note, from Section 165 of the Income Tax Act of 1842. That is shown in this copy that I am using.

Now, Section 32 of the Income Tax Act of 1918, was framed upon Section 54 of the Income Tax Act of 1853. Then, again, Section 33 of the Income Tax Act of 1918 uses the phrase "has been charged with tax by deduction or otherwise",—just a little variation, you see, from "has paid or has been charged with tax".

In my opinion, there is no significance in the difference of language there, and it arises just from the fact that you had different draftsmen drafting these sections at different times in our tax history.

Q. Would it be fair to say, do you think, that that language, particularly the language that I quoted from

Section 32, subsection 2, suggests that there is at least a doubt in the minds of some of the members of Parliament whether the word "paid" would have been broad enough to cover every case desired?

A. No, I do not think that is the significance, if I may say so. This is just a personal opinion, because I cannot refer to any judicial authority. It has never been judicially construed. But the expression "charged", as it occurs in English income tax acts, has more than one meaning. Sometimes the word "charged" relates to the operation of making an assessment whereby a taxpayer becomes liable to pay a sum of money to the Crown. On other occasions the word "charged", as used in our Income Tax Acts, means the operation whereby the King in Parliament imposes a tax, looking, as it were, to the primary step, anterior to the operation of the machinery of assessment and collection.

May I put it this way: The assessment that is ordinarily made upon me in respect of my professional profits is probably not made,—by being entered in an assessment book, which is signed by the Commissioners of Taxes,—until the end of August or the beginning of September in the year.

In one sense in which the word "charged" is used in the income tax acts, I have not been charged until that assessment is made and signed; but in another sense in which the expression is used in the income tax acts, everybody having liable income is charged with tax as soon as the Finance Bill has been passed. There are two different senses in which the word is used, and upon occasions some little confusion has arisen as to the precise scope of the word "charged" but there can be no doubt about it—this is everywhere recognized by English lawyers,—that the word is used in two different senses.

I think that the expression "has been charged", is introduced here to cover the difference between the case in which the individual has actually paid the tax, and the case in which the individual has been charged with tax and has not yet paid, perhaps not yet been assessed. The income with which he is liable to be charged is to be taken into account in computing his life insurance relief. Certainly I do not think there was any doubt in the draftsman's mind as to the scope of the expression "paid", and I think that the draftsman in this case must have had before him the draft of Section 29, and then again the draftsman of Section 27 of the 1920 Act had before him, when he made his draft, all these things. That is how I see it.

Q. I call your attention to Section 33, subsection 1, of the same act, where the relevant language is "proves to the satisfaction of the Special Commissioners that, for any year of assessment it has been charged to tax by deduction or otherwise"—and so forth?

A. Yes.

Q. Is there any special significance to the use of the term "charged to tax"?

A. No, I think not. I think the expression "charged to tax by deduction" there, is construed in the way I have indicated in relation to Section 32.

Q. Of course, in the relief from Dominion taxation, in the section relating to such relief, I should say that the word used is "paid"?

A. Yes.

Q. Is there any significance to be given that word, in your opinion?

A. No; these were used by the Parliamentary draftsmen interchangeably in this relation.

Q. So that, wherever, throughout these acts, such terminology is used, unless other construction is plainly determined by the context, the same thing is meant, whatever expression is used?

A. Yes.

Q. I take it from what has been said that your conclusion is, then, that even though the corporation paying the tax in the first instance is not paying the shareholders' tax, but is paying its own, even though no additional money is ever paid into the Crown for income tax purposes, when a dividend is declared, and even though the rate at which the deduction is made may be greater or less than the rate at which the corporation paid the tax on its profits, I take it from what has been said here that you are of the opinion notwithstanding all the circumstances that the shareholder has paid the tax?

A. Yes, that the shareholder has paid the tax that has been deducted from him. Don't let there be any doubt as to what I am saying on that point. I do not say for a moment that the shareholder has paid the tax that the company has paid to the Crown. The shareholder has paid by deduction the tax that has been deducted from him by the company. He has not paid any tax on the company's profits.

(Thereupon the following colloquy took place between the presiding Member of the Board, and counsel for respondent and counsel for petitioner):

MR. KIMBALL: I wish to put in some decisions, but before I put them in I wish to say this: There may be other decisions that we may want to refer to. I was operating on the thesis and hypothesis that your Honor would consider anything that we might find for him in writing the briefs, and that was my assumption and understanding with the gentlemen on the other side. . . .

So that, frankly, I do not want to have this record closed without something being very clear as to just what may be considered in or available for your Honor's consideration in the way of decisions.

Mr. Spofford calls to my attention some decision of the Board in the Burns case, I think?

MR. SPOFFORD: Yes.

MR. KIMBALL: In which I gather that the Board would not consider various statutes used in evidence, and with all respect to all that was said there, and that being a different question from a consideration of decisions as opposed to statutes it is, nevertheless, a fact that another member of the General Counsel's office, apparently with the approval of the two Board Members in two other cases, and with the approval of eminent counsel on the outside, entered into stipulations in the London Guaranty and Accident case, and the London and Lancashire case, substantially as follows:

> "Either party may cite to the Board such decisions of the British courts and such text books as it desires and such citations or other decisions deemed material by the Board may be considered by the Board, if not outside the issue presented."

I think I have added the words that I am now about to read, but they are "the same as if duly authenticated copies had been placed in evidence."

I was laboring all the time and I am quite sure that the gentlemen were on the other side, too, under the impression that such a stipulation would be acceptable and would finally be executed here.

THE MEMBER: I do not think that the Board should receive a stipulation in just that form. I think the Board should take cognizance of any decisions of the British courts bearing upon this question, but as to text books I think it should not. You might find one text-writer supporting one view, and another text-writer supporting another view, and they are certainly not authorities. I will be glad to have you cite any decisions of the British courts, and if I can possibly get

hold of the copies of the decisions, I will be glad to consider them.

MR. KIMBALL: If you cannot, that is, if it is not here in our building, I would like to have the privilege of getting it wherever it can be obtained.

THE MEMBER: I do not see any objection to that.

MR. SPOFFORD: . . . We do not want this case to be settled by any trial strategy. General Counsel had over a month to prepare for this case. . . . . He said that, in an abundance of caution, he would like to have this record show any text books that could be furnished. I objected on the ground that they would be, to all intents and purposes, the same as testimony of a qualified expert. He said he was agreeable. Then I said to him that the Board has held in the Burns case that these are matters of fact and we cannot go beyond the record to take cognizance of matters of fact. He said that that has only to deal with matters of statute law.

I submit to your Honor that the decisions of various courts are on the same basis as the statute law. I do not want to be captious in this matter, but I would like to have the record show an exception to your Honor's ruling, simply so that I may preserve my right on appeal.

THE MEMBER: The record will show an exception.

(Thereupon, "Volume XVIII, Part V, Reports of Tax Cases" (containing the official report of the case of *Neumann v. The Commissioners of Inland Revenue,* at page 332), and "Volume XV, Part III, Reports of Tax Cases" (containing the official report of the case of *The Commissioners of Inland Revenue v. Dalgety & Company, Limited,* at page 216) were offered and received in evidence as Respondent's Exhibits "A" and "B." The full texts of the opinions and judgments contained in

these exhibits are set forth in Appendix "B" attached hereto.)

The foregoing evidence, and the appendices attached hereto and made a part hereof, is all the material evidence adduced at the hearing, and the same is approved by the undersigned.

W. R. SPOFFORD,
Attorney for Petitioner.

The above statement is agreed to by Herman Oliphant, General Counsel of the Treasury Department, as attorney for the Commissioner of Internal Revenue.

.....

Approved and ordered filed this eleventh day of June, 1936.

(Sgd.) CHARLES P. SMITH,
Member.

APPENDIX "A."

KING'S PRINTER'S COPIES (OFFICIAL TEXTS) OF UNITED KINGDOM INCOME TAX ACT OF 1918, and FINANCE ACTS, 1919 to 1934, Both Inclusive.

Consisting of Petitioner's Exhibits Nos. 1 to 18.

(Ten Copies of this Appendix Bound as a Separate Book.)

Summary of Exhibits Included in Appendix "A".

Petitioner's
Exhibits Nos.

1. United Kindom Income Tax Act of 1918.
   (8 & 9 Geo. 5. Ch. 40.)
2. United Kingdom Finance Act, 1919.
   (9 & 10 Geo. 5. Ch. 32.)
3. United Kingdom Finance Act, 1920.
   (10 & 11 Geo. 5. Ch. 18.)
4. United Kingdom Finance Act, 1921.
   (11 & 12 Geo. 5. Ch. 32.)
5. United Kingdom Finance Act, 1922.
   (12 & 13 Geo. 5. Ch. 17.)
6. United Kingdom Finance Act, 1923.
   (13 & 14 Geo. 5. Ch. 14.)
7. United Kingdom Finance Act, 1924.
   (14 & 15 Geo. 5. Ch. 21.)
8. United Kingdom Finance Act, 1925.
   (15 & 16 Geo. 5 Ch. 36.)
9. United Kingdom Finance Act, 1926.
   (16 & 17 Geo. 5. Ch. 22.)
10. United Kingdom Finance Act, 1927.
    (17 & 18 Geo. 5. Ch. 10.)
11. United Kingdom Finance Act, 1928.
    (18 & 19 Geo. 5. Ch. 17.)
12. United Kingdom Finance Act, 1929.
    (19 & 20 Geo. 5. Ch. 21.)
13. United Kingdom Finance Act, 1930.
    (20 & 21 Geo. 5. Ch. 28.)
14. United Kingdom Finance Act, 1931.
    (21 & 22 Geo. 5. Ch. 28.)
15. United Kingdom Finance Act, 1932.
    (21 & 22 Geo. 5. Ch. 49.)
16. United Kingdom Finance Act, 1932.
    (22 & 23 Geo. 5. Ch. 25.)
17. United Kingdom Finance Act, 1933.
    (23 & 24 Geo. 5. Ch. 19.)
18. United Kingdom Finance Act, 1934.
    (24 & 25 Geo. 5. Ch. 32.)

APPENDIX "B."

FULL TEXT OF BRITISH COURT OPINIONS AND JUDGMENTS OFFERED BY PETITIONER AND RESPONDENT.

Consisting of Petitioner's Exhibits Nos. 19 to 22, and Respondent's Exhibits "A" and "B."

NOTICE OF EXCEPTION TO THE RULING OF THE BOARD DENYING RESPONDENT'S MOTION TO REQUIRE THAT THE RECORD ON REVIEW AS CERTIFIED CONTAIN A NOTATION THAT CERTAIN BRITISH DECISIONS WERE CALLED TO THE BOARD'S ATTENTION BEFORE ITS DECISION HEREIN.

(Filed June 4, 1936.)

COMES Now the Commissioner of Internal Revenue, by his attorneys Herman Oliphant, General Counsel for the Department of the Treasury, and Hunter B. Linton, Special Attorney, Bureau of Internal Revenue, and formally excepts of record and renews his oral objection and exception made May 27, 1936, to the ruling of the United States Board of Tax Appeals at the hearing on respondent's amended objections to statement of evidence and amended counter præcipe for record, which motion was and is to the following purport and effect:

That the transcript of record on review as certified by the clerk of the United States Board of Tax Appeals should be required to show and should contain a notation to the effect that certain British decisions were cited to the Board prior to the date the decision in this case was rendered by the Board, such decisions being cited under the Board's ruling and holding made at the time of the trial, November 12-13, 1935 (Tr. pp. 82, 204-5), that it would consider any and all decisions of the British courts called to its attention which bear upon the question here involved irrespective of whether such decisions were physically introduced in evidence in pamphlet form; which said motion was denied at the hearing thereof on May 27, 1936, and which cited decisions were and are as follows:

Duncan v. Commrs. of I. R., 8 T. C. 433, 443;
Assam Railways and Trading Co., Ltd. v. The Commrs. of I. R., 18 T. C. 509;
Attorney General v. Ashton Gas Co. (1904), 2 Ch. 621;
Bradbury v. English Sewing Cotton Co., Ltd., 8 T. C. 481, 520;
Commrs. of I. R. v. Blott, 8 T. C. 101, 111-112;
Mylam v. Market Harborough Advertiser Co., Ltd., 5 T. C. 95;
Purdie v. Rex, (1914) 3 K. B. 112;
Ritson v. Phillips, 9 T. C. 10;
Scottish Union & Nat'l Ins. Co. v. New Zealand & Australian Land Co., Ltd., (1921) 1 A. C. 172;
Sheldrick v. South African Breweries, Ltd., (1923) 1 K. B. 173.

(Sgd.) HERMAN OLIPHANT,
General Counsel for the Department of the Treasury.

Of Counsel:
HUNTER B. LINTON,
Special Attorney,
Bureau of Internal Revenue.

PRÆCIPE FOR RECORD.

(Filed April 30, 1936.)

To the Clerk of the United States Board of Tax Appeals:

You will please prepare and, within sixty days or within such time as extended by order of the Board from the date of the filing of the petition for review in the above stated cause, transmit to the clerk of the United States Circuit Court of Appeals for the Third Circuit certified copies of the following documents:

1. The docket entries of proceedings before the United States Board of Tax Appeals in the above-entitled cause.

2. All pleadings before the Board.

3. The agreed statement of facts and exhibits attached thereto.

4. Opinion and decision of the Board promulgated on September 30, 1935, and its order of redetermination dated November 30, 1935.

5. Petition for review.

6. Statement of evidence settled or agreed upon.

7. This præcipe for record.

The foregoing documents to be prepared, certified and transmitted as required by law and the rules of the United States Circuit Court of Appeals for the Third Circuit.

Dated this thirtieth day of April, 1936.

WM. R. SPOFFORD,
Attorney for Petitioner on Review.

COUNTER PRÆCIPE FOR RECORD.

(Filed May 6, 1936.)

To the Clerk of the United States Board of Tax Appeals:

You will please prepare and, within sixty days or within such time as extended by order of the Board from the date of the filing of the petition for review in the above-stated cause, transmit to the clerk of the United States Circuit Court of Appeals for the Third Circuit certified copies of the following documents:

1. Docket entries of the proceedings before the Board.

2. Pleadings before the Board:

(a) Petition, including annexed copy of deficiency letter.

(b) Answer.

3. "Agreed Statement of Facts" filed with the Board November 12, 1934, as amended at the hearing in the following particulars, to wit:

(a) The sentence commencing at page 3, line 8 of paragraph No. 6, was amended to read:

"The British Income Tax and/or United Kingdom Income Tax appropriate to the petitioner's dividends here involved, if there be any income tax at all with respect to said dividends, aggregated 808 pounds, 13 shillings."

(b) The sentence commencing at page 4, line 8 of paragraph No. 9, was amended to read:

"The British Income Tax and/or United Kingdom Income Tax appropriate to the Petitioner's dividends here involved, if there be any income tax at all with respect to said dividends, aggregated 54 pounds, 7 pence."

(c) The sentence commencing at page 5, line 7 of paragraph No. 13, was amended to read:

"The British Income Tax appropriate to the Petitioner's dividends here involved, if there be any income tax at all with respect to said dividends, aggregated 632 pounds, 14 shillings and 10 pence."

4. All exhibits attached to the agreed statement of facts referred to in paragraph 3 above.

5. Opinion and decision of the Board.

6. Petition for review, together with proof of service of notice of filing petition for review and of service of a copy of the petition for review.

7. Statement of the evidence as settled and allowed.

8. Orders enlarging time for the preparation of the evidence and for the transmission and delivery of the record.

9. This præcipe.

(Sgd.) HERMAN OLIPHANT,
General Counsel for the Department of the Treasury.

Service of a copy of the within counter præcipe is hereby admitted this day of , 1936.

.....
Attorney for Petitioner on Review.

CLERK'S CERTIFICATE.

UNITED STATES BOARD OF TAX APPEALS.
WASHINGTON.

DOCKET No. 75742.

George W. Elkins,
Petitioner,

v.

Commissioner of Internal Revenue,
Respondent.

I, B. D. GAMBLE, clerk of the U. S. Board of Tax Appeals, do hereby certify that the foregoing pages 1 to 1254, inclusive, contain and are a true copy of the transcript of record, papers, and proceedings on file and of record in my office as called for by the præcipe in the appeal (or appeals) as above numbered and entitled.

In testimony whereof, I hereumto set my hand and affix the seal of the United States Board of Tax Appeals, at Washington, in the District of Columbia, this eighth day of July, 1936.

B. D. GAMBLE,
(Seal) *Clerk, United States Board of Tax Appeals.*

IN THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE THIRD CIRCUIT

No. 6198. October Term, 1936

GEORGE W. ELKINS, PETITIONER

vs.

COMMISSIONER OF INTERNAL REVENUE, RESPONDENT

And afterwards, to wit, the 13th day of January 1937, come the parties aforesaid by their counsel aforesaid, and this case being called for argument sur pleadings and briefs, before the Honorable Joseph Buffington, Honorable J. Warren Davis, and Honorable J. Whitaker Thompson, Circuit Judges, and the Court not being fully advised in the premises, takes further time for the consideration thereof,

And afterwards, to wit, on the 21st day of July 1937, come the parties aforesaid by their counsel aforesaid, and the Court, now being fully advised in the premises, renders the following decision:

Upon Petition for Review From the United States Board of Tax Appeals

Opinion

(Filed July 21, 1937)

Before BUFFINGTON, DAVIS, and THOMPSON, Circuit Judges

BUFFINGTON, *J.:* The petitioner, a citizen of the United States, residing in Pennsylvania, filed his federal income tax return for 1931. It disclosed credits and deductions by reason of taxes deducted and paid directly to the United Kingdom by companies from dividends on stock owned by him. During the year, by reason of his stock holdings in British companies, he received the net amount of $23,993.72 in dividends, such dividends being accompanied by certification that $7,017.11 had been deducted and paid directly to the British Government.[1]

[1] The aggregate amounts involved are as follows:

	Gross amount of dividend	Amount deducted as British income tax by corporation	Net amount received in cash
British-American Tobacco Company, Limited	$16,082.28	$3,743.98	$12,338.25
Tobacco Securities Trust Company, Limited	1,018.80	201.27	817.03
The Imperial Tobacco Company, etc., Limited	13,910.30	3,071.86	10,838.44
	31,010.83	7,017.11	23,993.72

Under authority of Section 131 (a) (b) of the Revenue Act of 1928 (45 Stat. 791), 26 U. S. C. A., Section 131,[2] which allows a limited credit on income taxes for taxes paid or accrued to a foreign country, and under authority of Section 23 (c) of the Act of 1928 (26 U. S. C. A. 23)[3] which allows the deduction of the balance of the foreign tax paid from gross income, and relying on previous rulings and practice of the Internal Revenue Department, petitioner took a credit of $5,044.99 under Section 131, and a deduction from income of $4,162.03 under Section 23, the total sum of $9,207.02 being made up of the $7,017.11, deducted and paid directly by the foreign companies, and $2,189.91 paid by the petitioner directly on a surtax to the United Kingdom. Respondent, the Commissioner of Internal Revenue, disallowed the credit and claimed a deficiency on income taxes for 1931 of $4,259.94. A petition was thereupon filed by the taxpayer with the Board of Tax Appeals for redetermination, but that body, after a full hearing, held that the only amount of income taxable to the petitioner as dividends received from the British corporations was the net amount actually received. It conceded that the surtax paid to the United Kingdom on calculated dividends, amounting to $2,189.91, was a proper credit, but held that the $7,017.11 was not a British income tax "appropriate to" the dividends received. The deficiency of the petitioner was redetermined at $2,442.52, and from that redetermination this appeal was filed.

There can be no doubt that Congress has expressed its intent to relieve a taxpayer to the extent of taxes paid to a foreign government. Montgomery, in his Federal Income Tax Handbook (1936–37), p. 510, says: "The test of the deductibility of a tax is whether the tax is imposed upon the person desiring to make the deduction." Was the $7,017.11 a tax "appropriate to" dividends, directly borne by the petitioner, or was it a tax imposed upon and borne by the British companies? The answer is governed by the laws of England. It is by those laws that we must judge the nature of the tax, for only in those laws can we find the answer, who pays the tax. United Shoe Machinery Corp. v. White, 13 F. Supp. 97, 102. The

---

[2] "SEC. 131. Taxes of foreign countries and possessions of United States.

"(a) *Allowance of Credit.*—The tax imposed by this title shall be credited with:

"(1) *Citizen and Domestic Corporation.*—In the case of a citizen of the United States and of a domestic corporation, the amount of any income, war-profits, and excess-profits taxes paid or accrued during the taxable year to any foreign country or to any possession of the United States; and

* * * * * * *

"(b) *Limit on Credit.*—In no case shall the amount of credit taken under this section exceed the same proportion of the tax (computed on the basis of the taxpayer's net income without the deduction of any income, war-profits, or excess-profits tax any part of which may be allowed to him as a credit by this section), against which such credit is taken, which the taxpayer's net income (computed without the deduction of any such income, war-profits, or excess-profits tax) from sources without the United States bears to his entire net income (computed without such deduction) for the same taxable year."

[3] "SEC. 23. Deductions from gross income.

"In computing net income there shall be allowed as deductions:

* * * * * * *

"(c) *Taxes Generally.*—Taxes paid or secured within the taxable year, except—

* * * * * * *

"(2) So much of the income, war-profits, and excess-profits taxes imposed by the authority of any foreign country or possession of the United States as is allowed as a credit against the tax under section 131."

government has conceded that physical payment by the shareholder is not essential; if the $7,017.11 was received by the petitioner actually or constructively, it would constitute a part of his dividend income from British corporations.[4]

The British law was proven as a fact in the proceedings. Petitioner introduced an expert witness familiar with the income tax law of the United Kingdom, who testified that under British law the shareholder is regarded as a taxpayer in respect to the amounts deducted from the dividends for income taxes "appropriate" thereto. This proof was not contradicted, and, like the proof of any other question of fact, should not be arbitrarily disregarded. The Asiatic Prince, 108 F. 287, 289; Biddle v. Commissioner of Internal Revenue, 86 F. (2d) 718, 719. Indeed, in Blackmer v. Commissioner of Internal Revenue, 70 F. (2d) 255, 257, the Board of Tax Appeals is specifically warned that it cannot disregard unimpeached testimony.

Any hesitancy in accepting the expert's opinion of the British law is dispelled when we consider these principles, which taken together show the shareholder is the taxpayer:

(1) In general, the English income tax acts are based upon the principle of collection of tax at the source. Lord Halsbury in Laws of England, Volume XVII, p. 12, says:

"So far as possible, income tax is collected at the source, and persons paying rent, annual interest, or annual payments deduct tax on making the payment."

See also Hamilton v. Commissioner of Inland Revenue (1931), 215 K. B. 495. E. M. Konstam, K. C., in his work on The Law of Income Tax (6th Ed.), p. 4, states:

"The person who is ultimately liable for the tax either pays it under a direct assessment, or submits to a deduction of tax at the hands of some other person from whom he is entitled to receive money; and so important is the latter method of collection that at the present day at least 70 percent of the yield of the tax is collected by it."

Konstam's conclusions and opinion are that the shareholders' income tax upon their dividends is deducted "at the source." See 6th Edition, pp. 269, 270.

(2) An English company is bound under penalties to show in its dividend warrants, not only the net amount actually paid, but the gross amount corresponding to that, and the rate and amount of income tax appropriate to that gross amount. Section 33, Finance Act of 1924. This, of course, is also information that the taxpayer needs, so that the gross amount may be considered in the computation of the super-tax, and is used as a basis for the application of relief by way of repayment for taxpayers in the lower brackets.

---

[4] P. 10 of Respondent's brief states:
"If these amounts were received by the petitioner, either actually or constructively, they would constitute a part of his dividend income from British corporations."

The form of the return, although not conclusive in itself, at least is persuasive, that the payment is made by the company on behalf of the shareholder.

(3) The English method in calculating the surtax also supports the opinion of the expert. Under section 4 of the United Kingdom Income Tax Act of 1918, a super-tax is defined as an "additional duty of income tax." This tax was replaced in Section 38 of the Finance Act of 1927, and called a surtax. In determining the amount of the surtax, the gross amount of a dividend declared, before deduction of income tax, is used. It is not likely Parliament would use as a base for determining "additional income tax" a tax paid by the company directly. Specifically, the Board has allowed petitioner a deduction for the payment of his surtax of $2,189.91. That figure is arrived at by computing his total gross income, including tax paid at source. This figure being accepted as correct, it is but a recognition of the fact that the deduction at the source was income tax "appropriate to" the dividend petitioner received.

(4) The deductions made from dividends paid on shares bearing a fixed rate indicate that the shareholder is paying the tax and not the company. See Ashton Gas Co. v. The Attorney General (1906), A. C. 10, where the shares bore a preference dividend limited to 10 per cent, and it was held the company could not pay a 10 per cent "free of tax" dividend. Notwithstanding the contractual obligation to pay a certain fixed dividend, the company deducts what the shareholder is required to pay and pays it at the source to the Crown.

(5) The language of the taxing statutes would indicate that it is the shareholder who pays the tax through this process of withholding or deduction. The wording is always if a person "has paid any tax, by deduction or otherwise", or "has been charged with tax by deduction or otherwise." See Income Tax 1918, Part III, Section 29 (1), Part IV, Section 55 (1), Part X, Section 211 (1). See General Rules Incomes Tax, 1918, Sections 20, 23. See Finance Act, 1920, Section 27 (1).

(6) If the payment is not made on behalf of the shareholder, why does the English law permit relief and rebate of the payment to taxpayers in the lower brackets? Income Tax Act, 1918, 8 and 9 George V, Chapter 40, Part III. The simple effect of this provision is to return to the taxpayer, tax withheld from income which was not subject to a tax, but which the company was in the first instance required under the law to pay to the Crown.[5]

[5] Mr. Talbot, the British expert, testified (p. 124):

"* * * provision is made for the relief of such persons from taxation and an individual whose total income from all sources does not exceed 100 pounds per annum is entitled to exemption from income tax altogether. By reason of the operation of the principle of deduction of income tax at the source, many hundreds of thousands of people in England, although their particular incomes are exempted from income tax by law, receive their income in the form of dividends from which income tax has been or purports to have been deducted by the dividend-paying companies. At the end of the income tax year, these people present to the Inland Revenue Department at the office of the district inspector for their locality, claims for repayment of taxes deducted from their dividends * * *. In the course of my service as a district inspector, I must have paid out of the National Exchequer many millions of pounds sterling, which could have been paid out properly only if tax deducted from the dividends of the dividend-paying companies was tax paid by the recipients of those dividends."

We refrain from discussing the English authorities cited by both sides as giving comfort to the opposing contentions. We do so because of the admission of the expert on English income tax law that the point here at issue has never risen in any case.[6] We accept the English law, as stated by the expert, that the tax is paid by the shareholder by deduction, especially when this is buttressed by the principles above stated.

Judge Manton in Biddle v. Commissioner of Internal Revenue, supra (p. 719), conceded the force of the expert's statement of the foreign law, but refused to follow it because he said "we are called upon to interpret not the British income tax acts standing alone, but sections of our Revenue Act which provide for credits and deductions." He then concludes that our Revenue Act and "our system of credits and deductions is built around a concept of direct liability for taxation and direct payment" (p. 720).[7] We respectfully differ with the learned Judge's conclusions. In the first place, the Government, as noted (4) supra, has conceded that direct payment is not essential. Indeed, the doctrine of constructive receipt and payment is recognized in our system. Old Colony Trust Co. v. Commissioner, 279 U. S. 716, 49 S. Ct. 499. And in the second place, the Revenue Act expressly allows a credit for payment of foreign income tax.[8] The only question we are concerned with is, did the petitioner pay the income tax, and to ascertain this we must see what happened in England; what kind of a tax was paid; who paid it? There, we must find as a fact it is income tax paid by deduction or otherwise "by the shareholder."

Three other considerations compel us to this conclusion. First, if there is any doubt as to the construction of a taxing statute—and this cannot be ignored—such doubt is resolved in favor of the taxpayer. McFeely v. Commissioner, 296 U. S. 102, 56 S. Ct. 54; Boca Ratone Co. v. Commissioner, 86 F. (2d) 9; Crowe v. Commissioner, 86 F. (2d) 796; Pinkney Packing Co. v. Thomas, 17 F. Supp. 420. Next, the provision we are called upon to interpret is a relief provision intended for the benefit of the taxpayer and such construction should be given as will effectuate that purpose.

---

[6] Mr. Talbot testified (p. 141):

"In my experience in income tax administration, extending over twenty years, the point at issue in this case, namely, whether or not the tax in question was paid by the company or paid by the shareholder, has never arisen and I doubt that it could arise. It has never been questioned in England that when tax is deducted the deduction constitutes a payment of tax."

[7] Note that United Shoe Machinery Corporation v. White, 13 F. Supp. 97, proceeds on an entirely different ground. It admits that the question involved is one of foreign law and is, therefore, one of fact for the American court to determine. "* * *. The proper solution of this problem depends essentially upon the British Act and British decisions." The Court then finds as a fact that under the English law, it is the company that paid the tax on dividends and not the shareholder. The same theory underlies the decision Welch v. St. Helen's Petroleum Co., 78 F. (2d) 631. Judge Wilbur considers the English authorities and concludes that by these authorities the company is the taxpayer, and not the shareholder.

[8] In Old Colony Trust Co. v. Commissioner, — U. S. —, 57 S. Ct. 813 (decided on May 17, 1937), there was involved the refusal by the Commissioner to allow the deduction of a charitable contribution to a trust estate. Mr. Justice McReynolds in reversing the Circuit Court of Appeals says:

"The words of the statute are plain and should be accorded their usual significance in the absence of some dominant reason to the contrary. We find nothing in the regulations or practice of the Treasury Department or in the general purpose of the statute which requires the narrow meaning advocated by respondent."

See Burnet v. Chicago Portrait Co., 285 U. S. 1, 52 S. Ct. 275; United States v. Updike, 281 U. S. 489; Dauphin Trust v. United States, 80 F. (2d) 893, 896; Commissioner v. Bryson, 79 F. (2d) 397, 402. Finally, the rulings and practice of the Bureau of Internal Revenue since 1918 to 1933, S. M. 3040, C. B. IV–1, p. 198; S. M. 5363, C. B. V–1, p. 89; I. T. 2401, C. B. VII–1, p. 128, granting deductions and credits, plus the congressional reenactment of the statutes, have led to people making their investments and give the rulings persuasive force and should not be disregarded by the courts. McFeely v. Commissioner, supra; Morrissey v. Commissioner, 296 U. S. 344, 56 S. Ct. 289; Woolworth v. United States, 15 F. Supp. 679, 684; Cf. United Shoe Machinery Corp. v. White, 13 F. Supp. 97, 101. Congress has reenacted this provision in the Revenue Acts presumably knowing that the department was treating deductions by the British companies as income tax "appropriate to" the dividends of the shareholder. Beyond the purpose of the taxing authorities to exact more from taxpayers, there is no logical reason to reverse this ruling of many years which has the sanction of Congress.

So holding, the determination of the Commissioner and order of redetermination of the Board are set aside and the Commissioner is directed to allow the petitioner a deduction and credit for British income tax deducted from his dividends.

THOMPSON, *J.*, dissents.

A true Copy:

Teste:

Clerk of the United States Circuit Court of Appeals for the Third Circuit.

(33 B. T. A. — 127.)

In the United States Circuit Court of Appeals for the Third Circuit

No. 6198. October Term, 1936

GEORGE W. ELKINS, PETITIONER

vs.

COMMISSIONER OF INTERNAL REVENUE, RESPONDENT

Appeal from the United States Board of Tax Appeals

This cause came on to be heard on the transcript of record from the United States Board of Tax Appeals, and was argued by counsel.

On consideration whereof, it is now here ordered, adjudged, and decreed by this Court that the order or decree of the said Board of Tax Appeals in this cause be, and the same is hereby reversed; the determination of the Commissioner of Internal Revenue and the order of redetermination of the Board of Tax Appeals are set aside, and the Commissioner of Internal Revenue is directed to allow the

petitioning taxpayer a deduction and credit for British income tax deducted from his dividends.

Philadelphia, July 21, 1937.

Per Curiam.

BUFFINGTON, *Circuit Judge.*

(Endorsements:) Order Reversing Order of Board of Tax Appeals, etc. Received and Filed July 21, 1937. Wm. P. Rowland, Clerk.

UNITED STATES OF AMERICA,
Eastern District of Pennsylvania,
Third Judicial Circuit, Sct.:

I, Wm. P. Rowland, Clerk of the United States Circuit Court of Appeals for the Third Circuit, do hereby certify the foregoing to be a true and faithful copy of the original Transcript of Record in the case of George W. Elkins, petitioner, vs. Commissioner of Internal Revenue, respondent, No. 6198, on file, and now remaining among the records of the said Court in my office.

In testimony whereof, I have hereunto subscribed my name and affixed the seal of the said Court, at Philadelphia, this 23d day of September, in the year of our Lord one thousand nine hundred and thirty-seven, and of the Independence of the United States the one hundred and sixty-second.

[SEAL]

WM. P. ROWLAND,
Clerk of the U. S. Circuit Court of Appeals, Third Circuit.

U. S. GOVERNMENT PRINTING OFFICE: 1937

Supreme Court of the United States

Order allowing certiorari

Filed November 8, 1937

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Third Circuit is granted, and the case is assigned for hearing immediately following No. 55.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

U. S. GOVERNMENT PRINTING OFFICE: 1937